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MANUAL
OF
POLITICAL ETHICS

DESIGNED CHIEFLY
FOR THE USE OF COLLEGES AND STUDENTS AT LAW

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BY
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SECOND EDITION REVISED AND EDITED
BY THEODORE D. WOOLSEY

WITH AN INTRODUCTION BY NICHOLAS MURRAY BUTLER

VOL. I

PHILADELPHIA AND LONDON
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INTRODUCTION

It is the characteristic of a classic that its value increases with age. Lieber's great treatise on Political Ethics is a classic, and despite the fact that it was written nearly three-quarters of a century ago, its principles, its disquisitions and its ideals have immediate application to the political thinking and the political action of our own day. Indeed, one might well wish that those who aim at political leadership in America now, would turn with vigor and devotion to the study of the great classics of political science and qualify themselves for real success in the efforts they are making by a thorough grounding in the principles of political science and of political philosophy. There is more to be learned from the pages of Burke, of the Federalist, of De Tocqueville, and of Lieber, than from the reading of the daily newspaper.

The shifting forms of democracy have a common purpose and rest upon a common foundation. Human experience has already been wide and long. Many things have already been demonstrated and many fallacies and illusions have already been exposed. The ignorant and untutored man keeps on trying to repeat, at whatever cost, efforts which the race as a whole have long since made and found purposeless or futile. If history is philosophy teaching by examples, then there must be a philosophy which underlies history. It is toward an appreciation and an understanding of this philosophy that a study of Lieber's Political Ethics will lead.

Professor Lieber was not only a profound scholar, but he was keenly alive to events as they passed, and he left behind him a reputation as an admirable teacher. All these qualities shine forth from the pages of his Political Ethics. One may well wish that the reader of today will take politics seriously enough to master this thoughtful, inspiring and illuminating exposition of governmental forms, principles and policies.

NICHOLAS MURRAY BUTLER.

COLUMBIA UNIVERSITY
JANUARY 30, 1911

PREFACE TO THE SECOND EDITION.

The Political Ethics, of which the second edition is now offered to the public, received very high commendation from some of the first men in the United States on its first appearance in 1838. "Chancellor Kent," says Judge M. Russell Thayer, in his discourse delivered before the Historical Society of Pennsylvania, "commended it in the strongest terms for the excellence of its doctrines and its various and profound erudition, and observed, that 'when he read Lieber's works he always felt that he had a sure pilot on board, however dangerous the navigation.'" In a letter to Lieber, Judge Story said of it, "It contains by far the fullest and most correct development of the true theory of what constitutes the State that I have ever seen. It abounds with profound views of government, which are illustrated by various learning. To me many of the thoughts are new, and as striking as they are new. I do not hesitate to say that it constitutes one of the best theoretical treatises on the true nature and objects of government which have been produced in modern times, containing much for instruction, much for admonition, and much for deep meditation, addressing itself to the wise and virtuous of all countries. It solves the question what government is best by the answer, illustrated in a thousand ways, that it is that which best promotes the substantial interests of the whole people of the nation on which it acts. Such a work is peculiarly important in these times, when so many false theories are afloat and so many disturbing doctrines are promulgated."

Besides these testimonies from the two first jurists of the generation next preceding ours, additional ones from the historian Prescott, from Hallam, and others, may be found in the discourse of Judge Thayer.

Dr. Lieber suffered the edition which appeared more than thirty-three years before his death to become exhausted, without bringing a second before the public. This was not owing to the work having been superseded, nor to want of interest in the subject, nor to unattractiveness of style or method of treatment: on the contrary, it has from its copiousness of illustration, and its earnest, somewhat unscientific manner, a great attraction. But probably Dr. Lieber, whose mind was full of literary projects, never found time to get the work again ready for the press, or he shrank from the tedium of giving it a thorough revision.

The care of a new edition was intrusted by Dr. Lieber's family to the present editor, who will say a word or two on the plan according to which he has attempted to discharge his office. It was found that a large mass of materials, consisting of original notes, quotations from other works illustrative of the author's positions, and clippings from newspapers containing public documents, speeches, or other matter thought to be important enough for preservation, was pasted into a copy of the work. In looking over these materials, the editor perceived that much of all this was not intended for insertion, but was rather "matériaux pour servir" for a future revision. Some of this matter, again, had meanwhile appeared in a finished shape in the "Civil Liberty." Very few of the author's notes modified his views expressed in the work, and might be passed by without serious loss. And now came up the question how far it was expedient to increase the size of a book already quite large enough for the persons for whose uses it was designed, and in fact, owing to its copiousness and discursiveness, not seldom overflowing its regular channel. The attempt has been made to satisfy all practical demands by inserting only those notes of Dr. Lieber's which were judged to be of primary value or which bore in the way of modification or correction upon the text. Sometimes this new matter appears in an abridged form; sometimes part of a note is omitted. In all cases these notes are marked in the margin by a star accompanying the numeral used for reference. The notes in general are put at the foot of the pages to which they belong, instead of having their places assigned to them, as in the original edition, at the end of the sections. A very few notes by the editor show their source by being enclosed in brackets. The two volumes are made nearly equal in size by incorporating the earlier chapters of the second part in the first.

In the author's preface to the first volume he acknowledges the kindness of Mr. George S. Hillard in helping him to carry his work through the press,—"a service," he adds, "which those especially will know how to appreciate who write in an idiom which they have not learned from their mothers' lips." No aid could have been more valuable; but a swarm of small corrections, which needed a responsible editor's eye, still remained to be made. The editor has not scrupled to make them, while he has been inclined to allow some new-coined words, and some double forms (like ethic, ethical, monarchic, monarchical), to remain uncorrected or unharmonized. The citations through the book, so far as they referred to authors within the editor's reach, have been verified, and in general found to be correct.

THEODORE D. WOOLSEY.

NEW HAVEN.

PREFACE TO THE FIRST EDITION.

THE work itself will show the precise branch to which I have assigned the name of political ethics: it remains for me only to give here the assurance that the second part, containing a discussion of those many relations in which a citizen finds himself called upon to act, and for which, however important, the positive law does not or cannot furnish a sufficient rule of action, will be offered to the public at the beginning of the next year, if I remain in health.

The present volume forms, as may be conjectured from the title, a separate whole of itself, and has for that reason been called part first, and not volume first.

In carrying the work through the press, I have derived great advantage from the valuable advice and indefatigable kindness of my friend Mr. George S. Hillard, of Boston. He has done to me, and, I fondly hope, through me, to the public, a service which literary men will know how to appreciate, especially those who write in an idiom which they have not learned from their mothers' lips.

COLUMBIA, S. C., August, 1838.

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PART I.

ETHICS GENERAL AND POLITICAL.

POLITICAL ETHICS.

BOOK I.

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I. A SCIENCE is a branch of knowledge or collection of ideas systematically developed according to principles peculiar to the subject-matter itself. A science is independent within its own sphere. Everything is worthy of being scientifically investigated, that is, worthy of being investigated as to its essentials, separately and for itself, with the view of arriving at principles and laws. Every principle and law thus arrived at extends the sphere of knowledge, expands the human mind, increases the stock of civilization, and is emphatically useful. We are uselessly employed when occupying ourselves with accidentals; usefully, when with the essentials of things, *i.e.* with their nature, that which makes them what they are. This constitutes the difference between idle curiosity or a pedantic accumulation of facts, and scientific inquiry—that noble employment of man.[1] Whether we are worthily occupied does not depend, in an abstract point of view, upon the subject we inquire into, but upon the mode and object of inquiry; yet it may depend upon the subject relatively to other important considerations. Whether the subject be mind or matter; the soul, thought, appetites, the organs or the size of man;[1] the laws of nature or society, truth, error, or fiction; things as they are or the changes through which they have become such—everything may be scientifically investigated, is worthy of being so, and contributes essentially to our knowledge of the nature of things, their connection, their order, and the Being that prescribed it.

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[1] A person in England has counted how often the word And occurs in the Bible. Yet facts ascertained by mere curiosity may be used by others for higher purposes: for instance, in this case, if a scholar were desirous of showing how late children or nations free themselves, in using prose, from a continual re-

II. That science which treats of what is good, noble, and meet, wise and right, because it is good,[2] as well as the opposite of these, of the origin of our notions of the good, noble, and meet, the peculiar nature of man, without which he could not have had these notions, and his consequent essential attributes, the duties flowing from these attributes, and the relations necessarily founded upon our knowledge of the good—that science is called ethics or morals. Ethics constitutes a science, which treats of our moral character; of the good as an idea within us, and its application to our appetites and impulses, dispositions, actions, and habits. The former—the good as an idea within us and man's moral nature—forms the subject of the metaphysical or strictly philosophical part of ethics; the latter, its application to our natural dispositions

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currence to the conjunction And. So may scientific minds make proper use of facts collected for very different purposes: for instance, when Hippocrates studied the votive tablets in the Grecian temples, containing a brief description of diseases and the remedies, believed to have effected the cure, for which the grateful convalescent dedicated the table to the deity by whose assistance he supposed himself to have recovered; and when he laid upon this study and his own observation the foundation upon which the science of medicine mainly rests to this day.

[1] As Mr. Quételet, of Brussels, has published very interesting and important inquiries upon this subject.

[2] Section xxix., chap. iv. of Book I. explains why I have said "right because it is good."

and the various relations between man and man, belongs to the province of applied or practical ethics, called likewise, by some, the science of duties and virtues.[1]

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[1] *Doctrina de Officiis; e.g.* Cicero, *De Officiis.* The Germans have Pflichtenlehre (Doctrine of duties), and Tugendlehre (Doctrine of virtues).

Etymology. Words which designate a cause, principle, something general or abstract, have, in almost all cases, designated at an earlier period some effect, something specific or real. The mind proceeds from the concrete to the abstract, and then returns from the abstract to the concrete. The effect strikes the mind at once; the cause is arrived at by reflection. We observe the same process respecting the signification of the words *ethics* and *morals.*

Ethics is derived from the Greek word *ἠϑικός*, moral, from *ἔϑος*, custom, and *ἦϑος*, the accustomed dwelling, home. Plato de Legg. 7: *πᾶν ἦϑος διὰ ἔϑος.* Aristotle derives it in various places in his Ethics from *ἔϑος*. The word *ἦϑος* means—first, dwelling, home; secondly, that which is customary there, among men who have homes, among civilized beings; thirdly, habit; and lastly, the expression of our affections. *Ἔϑος* means always custom, usage, manners—that which has been settled among men as custom, that on which men agree that it is proper, propriety, to which the ideas of decorum, of what is right, what ought to be done, are closely related. At a later period man reflected on what was really general custom, what is essential in it, and what merely accidental, and why it is and ought to be so, or whether it ought to be different. The word *ἕδος*, the seat, chair, basis, also dwelling, especially of the gods, belongs likewise to this family of words, as the Latin *solum* soil, and *solere,* are connected, the first signifying that which has settled, is firm, the latter indicating a settled disposition, a being in the habit of doing a thing. The idea of something settled, stable—resting, therefore, on some general principle, for settling does not mean here an arbitrary agreement upon some fashion, but a custom which has become settled, tacitly and gradually so—is then to be found in all words connected with that of *ethics,* as is also the case with the corresponding words in the Teutonic languages. *Ἔϑος* in German is *Sitte,* a word closely related to the words *Sitz,* in English *seat* (which signifies both in German and in English also a dwelling-place, as, a country-seat, the seat of a tribe), *Gesetz,* the German for *Law,* that which has been settled, as the English *law* is connected with the verb *to lay,* that which has been laid down; *Satzung,* an ordained and well-established law. In Low German one of the meanings of the word *setten* is to ordain, and *sate* is ordinance, law. See a Dictionary of the Low Saxon Dialect, Bremen, 1770, under the words *setten* and *sate.* [So *wohnen* and *gewohnen,* German, *won* and *wont,* English, are cognates.]

Sitte is an ancient Teutonic word. *Situ, Sidde, Sid,* are used in earliest times; in Anglo-Saxon *Sida, Sitha,* in Swedish *Sed,* in Icelandic *Sidr.* *Sittlich* in German means moral; *Sittenlehre,* the science of that which is *sittlich,* ethics; *gesittet* denotes the behavior which is the effect of *Sittlichkeit, i.e.* morality.

The word *morals* is derived from the Latin *moralis*, which was first introduced

Taking a popular view of all sciences, we may comprehend them within two classes, namely: sciences which teach *what is* or *has been*, such as natural philosophy, natural history, statistics, geography, the philosophy of the mind, mathematics, civil history, etc.; or *what ought to be*—the subject of the moral sciences. This *ought to be* would have no meaning, wherever it applies to anything not wholly belonging to the physical world, were there not some actions which we cannot but consider as good, and others as evil, were man not a moral being, had he not a moral character, as soon and as long as he is master of his actions. Man is responsible for what he does.

III. Why is man responsible? Why is he accountable for what he does?—Because he has an essentially ethic character. What is this? in what does it consist?

It belongs to the province of ethics proper to furnish us with satisfactory answers and proofs as to the questions just made; but a clear and distinct understanding of some points involved in these answers is so necessary for a correct solution of numerous questions to be discussed in the course of this work; that it will be necessary to pay some attention to them here.

In the first place, the physiologist shows the superiority of the human organization, its various functions, and all that is connected with the animal life of man, over those of the rest of the animate creation. This subject forms one of the most interesting results of comparative anatomy and physiology.

IV. Man is endowed with sympathy or fellow-feeling, *i.e.* a feeling for the pains and pleasures of others, though uncon-

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by Cicero, de Fato, i. 1: Nos enim partem philosophiæ de moribus appellare solemus, sed decet, augentem latinam linguam, nominare *moralem*. *Moralis*, therefore, is derived from *mores*, very similar in its meaning to ἦθος, signifying, in its widest application, according to Quintilian, omnes habitus mentis. Seneca (Ep. 89) says that philosophy is divided by most people into *philosophia moralis*, *naturalis*, and *rationalis*.

nected with any interest of his own, or standing in no direct connection with him, even by way of fear for his own future protection; and with a peculiarly expansive feeling of attachment. The latter, an element of the greatest importance in everything at all connected with man's social state—and what is not?—is reducible to the first, or, if it be preferred, is a species of sympathy peculiarly developed, so that I feel justified in comprehending it under this head. The existence of the family, love of country, public spirit, devotion to our family, fellow-citizens, or species, disinterestedness, love, charity, friendship, the fine arts, the existence of the state, and whatever is noblest and best in man, is, in part or wholly, founded upon this great element of the human soul. Fellow-feeling, being an elementary attribute of our soul, cannot be proved otherwise than by our consciousness of it, and its effects being observable everywhere. Were a man to deny his being or ever having been conscious of any fellow-feeling, of ever having suffered except in consequence of injury done directly to himself, or having felt pleasure except as an effect of benefits done to himself; and were he farther to assert that he sees the effect of sympathy nowhere around him; it would be impossible to demonstrate its existence to him, any more than the existence of the sense of sight to any one who would boldly deny our direct and absolute consciousness of its existence and the consequent perceptions of colors.

The denial of this feeling as an essential and original attribute of the human soul, on the ground that we do not discover it with the lowest beings of the human race, is unfounded; for, first of all, we do actually find it with individuals to whatever tribe they may belong, or in whatever degree of civilization they may stand, though we may observe it only in its incipient stages, and it may, indeed, not manifest itself in many cases, in which individuals of the society we live in would show it in a strong degree. We shall have to treat at some length of the capital error into which numerous philosophers have fallen, to the perversion of truth, in supposing that that only is natural in man which, according to their presumption, is to be found in a supposed primitive stage of human society. Suffice it here to say that nothing can be more fallacious and subversive of all truth than the supposition that man's nature, be it intellectual, moral, or physical, can be found out best, or only, by observing him in what is supposed to be his state of nature, and a confusion of this supposed natural state with the state of savageness.

V. Nor can sympathy be denied to constitute an essential attribute of the ethic character of man, on the ground that we may discover it in animals likewise. We observe, indeed, in animals a feeling which forms in ourselves one of the incipient stages of sympathy; the anxiety of the parent for its offspring; with some animals the protection afforded by the male to the female, and with other species a decided disposition for living socially together. But how limited as to time and individuals is this feeling even with those species of the brute creation which rank highest in the animal scale, and in how many cases can we distinctly refer it to an impulse of nature, to instinct, with which it stops short, or to a mere feeling of common danger. The wild hogs are known to be peculiarly sensitive to common danger. If one be attacked, it will attract the rest of the herd by its violent cries, and all will resolutely attack the enemy. Yet this very animal is peculiarly prone to destroy its own offspring. The hen, which but a moment ago was the image of maternal solicitude, when the hawk was hovering over her brood, betrays no symptom of grief when she sees two or three of her chickens carelessly trampled to death by herself. The most striking instances of animal sympathy on record are, perhaps, those where animals of different species had so accustomed themselves to each other that the removal or death of the one caused the other to pine away; as, for instance, in the case of the dog and lion in the Garden of Plants at Paris. The Chinese rice-bird, when in a cage, will die when its mate is removed. Yet how limited is this, the highest instance of animal desire for the company of another, compared to the expanded sympathy of man—sympathy which is founded, as we characterized it, on a feeling for another individual unconnected with our own interest.

Some writers have acknowledged the existence of sympathy, indeed, but reduced it to self-interest, to egotism. It is the office of ethics to refute this doctrine, which, were it established, would destroy the basis of nearly all that is good, noble, or worth living, laboring, and striving for. It does not lie within the province of the present work to undertake this task; we will decide it in a practical way, only by asking, Are you a brother, or a son, or a friend? Have you ever seen a venerable old man insulted by a wanton youth? Have you never read the last farewell of Socrates? Does it not make you feel elevated and yet pained when you hear that Spinoza gave up his inheritance, small yet sufficient for his modest wants, rather than have a word of dispute with his sister, and that in consequence he had to work as glass-grinder in the daytime, that he might follow at night his profound studies? Did you feel nothing when you heard of the noble Poles who were torn from their families and sent to Siberia for having loved their country, and whose children were taken far into the interior of Russia? Have you never perused with satisfaction a vindication of a person against whom grave and plausible charges had been brought? Have you ever heard of the delight which burst from the lips of the ancient mathematician, in the words "I have found it," when he at length had solved the great problem, and felt the whole magnitude of his discovery for thousands of generations yet unborn? Has the perseverance of Columbus never reached your ears? And have you heard of these things without feeling joy or pain? Has no drama ever touched you? On what, indeed, is nearly the whole literature of belles-lettres founded, if not on sympathy—sympathy even with fictitious beings? Who peruses without emotion the agony of poor Jeanie in Scott's Heart of Mid-Lothian, when she is forced to testify against her sister,—the overwhelming joy when she has obtained the king's pardon for Effie? How many millions after millions have been touched by the return of Ulysses to his servants, son, and wife! How many thousands have felt sorrow at the sorrows of Juliet and Romeo,—joy at the joy of Robinson Crusoe when he finds Friday! How can all this be accounted for by egotism?

VI. Man is endowed with intellect, the faculty of reflection. Thinking begins with the perception of effects produced on our external senses, as well as of certain changes produced within ourselves. The mind then proceeds to the reproduction within us of that which we have perceived, or, in other words, of impressions. The faculties necessary for the important process by which we endeavor to know and understand the perceptions and the functions of the mind, performing this process, form, perhaps, that which more strictly is called the human intellect. Man analyzes total impressions, that is, impressions produced by an object considered as an entire and undivided whole, compares the simple qualities, thus discovered, with others obtained by the analysis of other total impressions, and reduces them to generic or general ideas (the process of generalization). He combines these again and draws conclusions (he reasons). Man analyzes, compares, combines, abstracts, concludes, and judges; he arrives at the ideas of truth and fallacy; he separates, and arrives at the causes of effects; he combines, and elevates himself above the sensible world. It is thus alone, for instance, that he acknowledges himself as the citizen of a state.

It has been maintained that, though there be a great difference between the capacities of man and the thinking of animals, yet the difference is not in the kind, but merely in the degree, and that the mental powers of the highest animal approach so closely to those of the lowest man that in fact it may be said there is no essential difference, but merely a gradual transition, and that therefore no conclusion, important in an ethic point of view, can be drawn from this difference.

This objection may be answered thus. First, whether the existing state of mind of the lowest man approaches very closely to the intellect of the highest animal, or sinks even below its level, is not the important point to be discussed. The question is, Can the low intellect of man be raised and developed, or not, and is the mind of the animal which approaches to that of the lowest man, in its highest manifestation? Everything else is accidental, not essential. The eyes of a new-born eagle may be weaker, and, considered in their actual state, more defective organs of sight, than perhaps those of a mole. Yet the eyes of the eagle are far superior, and differ strongly in their organization from those of a mole.

Secondly, I believe we do not venture too far in considering it as a settled truth that the mental activity of the animal, which it undoubtedly possesses, does not elevate itself above some of the most elementary combinations of impressions received through the senses—combinations which the mind of the brute performs without consciousness. We ourselves perform numerous combinatory processes without consciousness of the performance, *e.g.* when we avoid a disagreeable disturbance, which we have repeatedly met with, on our usual walk, by taking a different direction, and become conscious of the cause only after we have been reminded of our change by the fact of having chosen already a different walk. The animal undoubtedly thinks, but man reflects. "A mule," says Frederic the Great, in his Considerations on the Manner of Waging War with Austria (1758), "though it might have made ten campaigns under Prince Eugene, would not become for all that a better tactician." Man reflects upon his reflection; thinks on his thoughts; makes the mind itself the subject of its inquiry. The animal can do no such thing. If it could, it would speak; for though its organs of speech may not be so favorably formed for the expression of a great variety of tones and accents, as the high-arched palate, the peculiar construction of the windpipe, the peculiarly movable lips, and the many other organs of man which contribute to the variety, pliability, and beauty of language, yet there are many animals which possess a scale of tones, even now uncultivated as they are, sufficient to become the basis of articulate communication. It is not because the animals have no perfect organs of speech that they have no language, as Anaxagoras said that animals would be men had they but hands; but they have no language because they have not the ideas to be expressed. I doubt not but that some of the most intelligent animals feel at times a degree of that unspeakable pain which man suffers when language forsakes him and his soul is anxious to express more than words can convey. I believe that I have observed this painful effect of a struggle between the mind and means of utterance in a dog, which was anxious to communicate a serious accident and yet did not succeed in doing so for a long time. But this proves nothing against the position just taken. We observe the same pain in children. Did this pain always press upon the mind of the dog, the means of utterance would finally be raised to the wants of the mind, of whatever compound of sounds and signs this utterance should consist. It is the want of thought which makes the brute the "mute creation." William Humboldt says, "The *intention* and the capacity of expressing something, and not only a general one, but the distinct one of representing something *thought*, is the only thing which characterizes the articulate sound; and nothing else can be fixed upon to designate its difference from the animal cry on the one hand, or the musical tone on the other."[1]

I am aware that there existed formerly a ready way of accounting for many intellectual phenomena in the brute world, by ascribing them simply to instinct. This is not accounting for the phenomenon. First the superiority of man was said to exist in his acting by reason, while the animal acts by instinct; and when phenomena were cited which showed undeniable traces of combinatory powers, and which would have contradicted this dictum, it was said, these phenomena must be explained by instinct, because animals have nothing else to guide them. With this argument in a circle many seemed to be satisfied. It can, however, undeniably be proved that, in some cases, animals act not because impelled by instinct, but in consequence of mental action within them, though it may be, and most probably is, unconscious to them. Ask any hunter whether some pointers think or not.

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[1] On the Kawi Language on the Island of Java, etc., vol. i. (in German), Berlin, 1836, page 83 of the Introd. on the Diversity of the Organization of Human Languages. The whole in the Transactions of the Royal Academy of Sciences at Berlin for the year 1832, vol. ii.

VII. Yet though this mental action in the brute animal is allowed—and some instances will be given directly—there is still a line which very distinctly marks, even in a popular point of view, the difference between man and brute.

1. Man gathers experience and transmits it from generation to generation, conscious of its being experience and thus capable of receiving new additions. The animal improves likewise by experience; we find around us daily proofs of this fact. All drilling, which does not produce a new habit, is founded upon it. Animals entirely change their habits in different countries, and acquire gradually a facility in protecting themselves against the inclemency of weather or in procuring food. Young animals learn from the old ones, and what thus appears to many, at first glance, to be instinct, *i.e.* a primitive and direct impulse of nature, will be found, on closer examination, to be the effect of experience. The most timid animals, in parts of the world which had never been visited by intruders, showed no fear at their first approach. The birds or seals on the solitary islets in the Pacific show no apprehension of any danger, no shyness, when first attacked; but they acquire it as soon as they know the character of their pursuers. Whether the beaver builds its curious hut because it cannot resist an impulse entirely independent upon its volition, as the bee, for instance, forms its regular cell, or whether this species has formed its architecture by a stock of common experience gradually acquired, might be tested by observation; but this seems certain, that knowledge —and experience is a species of knowledge—is transmitted in animals by mere imitation, and remains within a very

limited circle, even with the most favored animals; while man improves it infinitely. The beavers of North America build to-day as they were found the day when the first white men settled on the Western continent. There is likewise a greater uniformity in the actions of animals in different parts of the world; the natural impulses, though acted upon by experience, seem therefore to be more prominent.

2. There is foresight in animals, and yet their foresight differs from that of man, even of the lowest grade, by a marked characteristic. The beaver builds very cunningly his dams at a great distance from his lodge, following entirely the necessity arising out of the shape and current of the river. Animals collect stores for the winter, build bridges, prepare for battles, concert upon plans to decoy, entrap, or otherwise to catch their prey, endeavor to mislead the disturber of their young ones or the enemy of their females, wait for favorable winds, observe a fixed order in travelling, relieve each other in the performance of laborious tasks, change their nests according to a change of circumstances, observe in some cases a certain degree of division of labor (as is the case with the beavers); the fox resorts to a series of actions having distinct reference to one another, in order finally to arrive at his object: indeed, very many things done by animals indicate foresight, or a faculty to combine received impressions. But there exists, as far as I know, no solitary instance of exchange among animals, or of anything that could be fairly considered as approaching it. The animal elevates itself in no case to any exchange of labor or produce, of which a certain degree exists among all men, the very lowest Hottentot or the most barbarous South-Sea Islander not excepted. There is no human tribe known which has not risen to this incipient stage of all civilization, however impeded its farther progress may be by constant disturbances, such as incessant warfare, the permanence of savage habits, famine, or disease. Even the most brutish Pelew Islander will willingly part with the fish which he has caught, for a piece of iron. So common an act of man is the exchange of articles and of labor, en-

grossing so much of his attention, and so large a number of all human actions in common life consist in exchanging, that in German the word *acting* means carrying on trade, and *action* a commercial house. Yet the etymology of the German word indicates nothing of the kind; for *handeln* (etymologically the same with the English *to handle*) is derived from *Hand*, and means, still, acting, because our visible actions are chiefly performed with the hands.

VIII. It is not necessary for the present purpose to ascertain when the animal acts, simply impelled by instinct or not. If it be shown that in many cases the brute thinks, it suffices for our purpose, which, in this particular case, is to prove on the one hand that it is an erroneous notion, and, I believe, one unworthy of the Creator, to imagine that the whole brute creation moves and acts in no other way than the dissolved chemical elements of some body when they crystallize; on the other hand, that it is equally erroneous to deny any essential difference in the thinking of the animal and that of man. If a bird builds its nest for the first time, we cannot suppose that it has retained during the whole time it was living singly, a recollection of its parental nest, or that any idea of the fact that at the proper season it will have young ones in its turn, and that it ought, consequently, to provide for them beforehand, has been imparted to it by any other individual of its species. This would necessarily indicate operations of the mind, which we entirely miss where we should certainly expect them soonest. But if, on the other hand, a rising freshet threatens to reach the nest of a granivorous bird, built in a hedge, and the bird hastily builds a temporary nest in a safer place, and carries, against its natural disposition, and contrary to the common use for which the beak is formed, its young with care from the endangered spot to the new nest, we cannot possibly explain it by instinct, if this word is meant to express any definite idea. When the land-crabs of the West Indies sally forth, at the proper season, in long procession from the interior mountains and proceed in as straight a line as possible to the sea-shore, to deposit their eggs and shed their shell, and then return in the same order, we can hardly bring ourselves to consider these movements in so low an animal to be the effect of experience and thinking. Take, on the other hand, a Newfoundland dog, which, as is common with dogs, took great pleasure in walking with his master. He soon found out that the act of taking hat and gloves, or of merely putting aside books and papers, at certain times of the day, was an indication of the master's intention of going out, and he expressed his anticipation of pleasure by manifest signs. Several times, however, the dog had been sent home, as his company could not always be convenient to the master. The consequence was that the dog would take good care not to show that he expected to leave the house, but he would slyly steal out of the room, as soon as he thought that any indications of a walk had been given, and wait at a certain corner which the master had to pass daily, and which was at a considerable distance from home. Surely this indicates some operation of the mind, not to be accounted for by instinct.[1]

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[1] The above instance has not been mentioned because peculiarly remarkable, but simply because it fell under my own observation. I can give another more striking instance of mental operation in this intelligent animal. He accompanied a servant, who rode to a place at some distance from home. The horse was tied to a tree in front of a house, while the servant executed his message. When, after some delay, he came out of the house, the horse was gone; he went on a hill, and from this elevated spot he observed the dog leading the horse by the bridle, which the canine leader held in his mouth, both trotting at a moderate pace. The dog brought home the horse and led it to its proper place in the stable. So he was in the habit of leading one of the horses to be watered. This animal was sent from the coast of Labrador, and was not of the common long-haired breed of Newfoundland dogs.

Several interesting works have been written on the instinct, habits, and extent of thinking in animals. Some great physiologists, such as Haller, have collected most remarkable facts. There are some interesting anecdotes, connected with this subject, to be found in various volumes of the London Library of Entertaining Knowledge.

The reader who has any curiosity to know the old writers on the question whether animals have souls or not—a subject much discussed at one time, on religious grounds—may refer to the article Rorarius, in Bayle's Dictionary.

CHAPTER II.

Sensuality and Rationality.—Man can determine his own Action—is free.—Animal Affection.—Right and Wrong; Ought and Ought not.—Conscience.—What it is.—Its Origin.—Locke's Opinion discussed.—Universality of Conscience.—Uniformity of Moral Codes and Views.—The Thugs and Battas.—Can we explain Man's Moral Character by Sympathy alone?

IX. THE infinitely superior intellect of man leads to another more important difference between him and the brute creation. The animal is, with rare exceptions, strictly confined within its own sensuality, that is, within the sphere of its senses alone. They direct its actions, or afford those impressions on which its limited sphere of thinking depends. Its affections are founded on its sensual impressions and impulses; the brute lives and moves within the sensible world alone. I said, "with rare exceptions." If a dog, as lately happened, rushes into a house wrapt in flames, to save an infant far too young to have ever bestowed any act of kindness upon the animal, and if the animal, nevertheless, saves no article to which it had been accustomed for years, it cannot be denied that this is, in its kind, affection, to which the sensuality of the animal alone cannot have prompted or the mere sensual nature impelled it. These exceptions have nothing startling for us. Who will say that he has seen the whole order of things in its details? who can aver that he knows for what the Great Ruler has destined his brute creation?

X. Man, belonging likewise in part to the sensible world, and being subject to the *necessity* of matter, according to his sensuality, *i.e.* to his belonging to the sensible world and its laws in which everything *is* determined, and does not determine itself, has, on the other hand, the great and grave privilege to determine himself. He can guide, determine himself by reason, within certain limits given by the material world, he can *choose.* According to his sensuality, man is bound; if he feels pain, he cannot help being prevented by it from freely thinking; according to his rationality he is free, he reflects and chooses—he enjoys freedom. His will is free, because he can determine himself, with regard to willing an object of which he is conscious. The proof of this is our consciousness of being able to will something which is repugnant to our sensuality, or which may cost us the greatest sacrifices of our warmest affections. The dog could be driven by its affection to act against its senses and common instincts; but it cannot elevate itself by reason above even this affection.[1]

XI. If man acts, he may be impelled by instinct, or prompted by his sensuality, *e.g.* when he drinks, being thirsty, or struggles to save himself from drowning, in which case he acts in common with the animal. Or he may determine his own will. In the latter case, he may be actuated either by motives of expediency, when he simply judges whether his action will lead to the object he has in view, *e.g.* when he grinds the sickle to reap his wheat; or by moral motives (which in this case include the immoral ones, as illness is included in the state of health). The moral motives make an action good or bad, praiseworthy or hateful, deserving of applause or condemnation.

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[1] It is one of the greatest and most difficult problems of philosophy to show how the free agency of man, or self-determination, is compatible with the necessary order of things, the omniscience of the Deity, and the dependence of man on society, or, which is the same, how man's ethical individuality exists along with his close and intimate connection both with the matter around him and the general course of the development of human mind, his close dependence upon the times he happens to live in. Though far from being solved, whatever some recent philosophers may have advanced, deceiving themselves by an amplification of words rather than an explanation of the subject, we know enough, and it can be sufficiently proved, even were not the consciousness of our ethic character so primary an element of the human soul, that both do exist, and that therefore the solution of the difficulty must be possible,—whether in this world is another question. Mr. Quételet, a writer of uncommon merit, has given most interesting statistical details on the physical laws which influence the intellect and moral character of man, in one of his recent works, entitled On Man and the Development of his Faculties, or Essay on Social Physics, Paris, 1835, 2 vols., in French—a work deserving attention.

Whence arises this new element in the human soul?—this principle according to which we call actions good or bad, and which we are unable to apply to matter, or to the animal mind, but to the human actions alone?

XII. It is evident that had we not the sense of sight it would be absolutely impossible for us to arrive at the notion of color by the operation even of the keenest intellect, or the most comprehensive genius upon perceptions received through the other senses. Yet we are conscious of the perception of color, and could not possibly alienate it from our mind, even were we to attempt it, for the very reason that we are conscious of it in precisely the same degree as we are conscious of our existence. No man can prove either. If a person were to ask us to prove our consciousness of the notion of color, we could not do so—the question relates to a primordial consciousness of the mind itself; but we would answer perhaps thus: "All we can say is, we know, we are conscious of the fact, that we exist, that we see, that we have the notions of different colors. If you deny it, there is no remedy; but, whatever you may pretend, the truth is, you yourself cannot help acknowledging them to exist in every one whom you see endowed, like yourself, with the organs of sight. Your own consciousness of the perception of colors forces you—not by a long course of reasoning—to acknowledge it in others, as soon as you see them endowed with active organs of sight. And, what is far more important, you do not only allow the consciousness of color to exist in others, but you demand it, you insist upon it, you presuppose it in every fellow-creature, and found your conversation, arguments, social and political intercourse, upon it. You would go so far as to punish the pretence of its non-existence, *e.g.* if an officer were to pretend that he perceived somehow or other a flag being hoisted on the admiral's vessel but he knew nothing about the colors exhibited by the flag or you would be dissatisfied with a servant were he to gather fruits which evidently show by their color that they are not ripe. You acknowledge and demand the consciousness of color in others, because you are conscious that you possess it *qua homo*, *i.e.* you do not only feel, believe, but you have the undoubted, primitive, and absolute certainty of it; you *know* that this consciousness constitutes an essential attribute of your being, and that it is not accidental."[1]

Greater certainty than this absolute consciousness we cannot possibly obtain. We might show the great probability that all men *qua homines*, if provided with sound eyes, have the consciousness of color, because we find traces of this sense among all men, and conclude that future generations will resemble their forefathers; but it can be made probable only in this manner; while absolute consciousness gives us absolute certainty. Take, for instance, "I know I am;" this is more certain than any mathematical proof can be made, for even that has first to rely on some axioms, which presuppose not only my existence, but also a belief in my own judgment and the power of the mind to draw correct conclusions.

XIII. Precisely similar to the foregoing, with regard to its origin, is the idea, "we ought," "thou shalt" or "shalt not" —the idea or consciousness of right or wrong. The subtlest intellect, the most vigorous mind, unaided by anything else, cannot arrive at any other idea, with regard to an action, than that of expediency, fitness, correctness, respecting the choice of means for the object in view. Yet we find in all men, even in the lowest or most barbarous, the feeling denoted by "*he ought*," or "*he ought not*," entirely independent of the expediency or judiciousness of our action—in a word, we find the moral element in the human soul—the consciousness of right and wrong, not of a particular right or wrong, but simply that there are actions which can be called right, and others which are wrong independently of their expediency. Neither experience, nor revelation, nor anything else could have given or can have been a substitute for this original consciousness of *ought* or *ought not*—of right or wrong.

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[1] [Yet some men are color-blind. We assume, from what we know of ourselves, a general aggregate of human qualities, unless we find proof to the contrary.]

Suppose for a moment there was no idea of right or wrong in your mind—no feeling of *ought* or *ought not;* though this supposition is as difficult a process as that of imagining ourselves for a moment without any notion whatsoever of color; for we are primitively conscious of them, and it is exceedingly difficult to imagine ourselves even for a moment not to be conscious of that of which we are conscious. Indeed, we never can wholly succeed in this process, because this consciousness forms part of our very self. Suppose, however, as well as you can, you had no feeling whatever of right or wrong, what could possibly prevent you from stealing anything of which you are in want, and if convinced, as in some cases you well might be, that detection of the theft itself is impossible, that the article will never be missed? Experience? I ask, what experience?—external experience? For instance, that thefts are generally discovered? Our experience may lead us to the very contrary. We may be lawyers, and by experience have become convinced that the greater number of thefts remain undiscovered and unpunished. Or that we know by experience, from observing others or ourselves, that doing wrong does not afford lasting pleasure? Then I ask, what pleasure?—external or internal? If external be meant, the assertion is unfounded, for many men live a most comfortable life to the end of their days with means fraudulently or criminally acquired. If internal pleasure be meant, it is only another expression for the pleasure, or applause, we feel independently of the expediency of our action, which is the very thing I insist upon. Or because we know by experience that no one will prosper upon fraud? This is unsound again. People, families, dynasties, many successive generations, have prospered upon fraud and crime; every day's experience, as well as history, proves the fact. God has given to man a far higher character, and the order of things in creation is founded upon a far different principle than the gross one that worldly misery follows upon wrong, and prosperity upon right, in each case. Indeed, it would not be a moral world, if the necessary consequence of theft were the withering of the arm that committed it; if the tongue that lies were stricken with palsy. On the contrary, it would be a non-moral world, a world of necessity and not of freedom of action. It is unsound, it is immoral, to teach the young that by virtue they necessarily insure worldly success. The truth ought early to be inculcated, that virtue may not lead to success, that it may lead to far greater pangs than those who are not virtuous ever can feel, for the very reason that they are not virtuous.—Or because revelation says, Thou shalt not steal? Suppose we have no feeling of right and wrong, or, which is the same, that we ought to do what is right, and ought not to do what is wrong—and it will be recollected that we argue under this supposition—what should induce us to obey revelation, even if we had acknowledged it as such? It must needs remain an entirely extraneous matter to us. No revelation could be addressed to non-moral beings. Or do we obey revelation merely because punishment is threatened to the disobedient here as in the world to come? This will not be claimed by any true believer, for two reasons. Fear, of itself, is no moral motive. The animal which does or omits certain things because it knows that chastisement will follow disobedience, does not act morally on this account. So marked is the difference between the action of the animal and man in these cases, that some languages, *e.g.* the German, have distinct words for the infliction of evil in consequence of prohibited action, one with, another without, reference to the moral character of the punished action. But let us even waive this point; what can at all give birth to a belief in the punishment with which we are threatened for immoral acts or the wrong we do, if we have not previously the notion of right and wrong, and that *therefore* the latter *deserves* punishment, because we *ought* not to have done it?

XIV. This original consciousness of right and wrong—this consciousness of *we ought* or *ought not*,—is called conscience, from the Latin word *conscientia*, consciousness, from *conscio*, *con* and *scire* to know, applied to this specific consciousness of right and wrong, *conscientia boni et mali*, *recti et pravi*, because it is the most important of the different species of consciousness. In many, perhaps most languages, the word which designates this consciousness is derived from a corresponding root. The German *Gewissen* is derived from the verb *wissen*, to know, to wit; the Greek συνείδησις is etymologically the same with the Latin.[1]

I repeat, the experience of pleasure cannot give us the notion of right and wrong. I ask, who has cast an account of all actions in his life which have afforded him sensual pleasure (for as to the other kind of pleasure I have already shown that it coincides with what is claimed), or made out a list of all actions with which he has become acquainted both in history and his own experience, and of those which have given him unpleasurable or painful sensations, and accordingly made up his opinion what actions he will call good or bad? Besides, if we adopt this ground, what have we to oppose to those who maintain, and in truth too, that those actions which we call vicious, criminal, or villanous have given them the greatest pleasure, for instance, the entrapping of unwary innocence? There have been not a few people who have found delight in cruelty itself, *i.e.* in the infliction of useless pain, though they felt they were doing wrong. The fact cannot be denied; observation as well as personal confessions confirm it;[2] and yet conscience does not only act in despite of it, but approves in those cases most in which we feel most compelled to act contrary to pleasurable sensations.

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[1] Συνείδησις, from σύνοιδα, I am one who knows, is conscious of a fact. It is the form of the perfect with the signification of the present tense of ἰδ- Ϝιδ- I see, a verb never used in the present tense, the perfect of which, *I have seen*, *have perceived*, denotes the result in the present time, *I know*. Σύνοιδα is perhaps know with myself, *i.e.* I am both object and subject of knowledge.

[2] * The confessions of Margaret Gottfried, executed at Bremen in 1830, are an illustration. She had poisoned successively above thirty persons, including her parents, children, friends, etc., and found pleasure in the excitement. If we choose to call every crime monomania, she was a monomaniac; but there was

Conscience is, then, an original consciousness of right and wrong, not of a specific right or wrong; it is the consciousness according to which we are undeniably aware that a difference of right and wrong, good and bad, exists. Like every species of consciousness, that of our existence not excepted, it begins with an indistinct feeling, and becomes clearer the more effectually the matured mind (both matured by the age of the individual and the progress of civilization) acts upon it. So it is with the beautiful; so it is with all ideas we receive through the senses. The sense of sight is first but dim. The mind must act upon the impressions received, and the sense itself must be practised, before it becomes clear. People who live in large cities see nothing but one vast green mass when they view a forest from the top of a hill; while the practised eye of a hunter, or ranger of the wood, discerns at once numerous and important differences. Most astonishing instances of the degree to which the keenness of the eye can be improved, and how rapidly it may work in observing distinctive marks, are on record;[1] yet the sense of sight is innate, or the idea of color could not possibly have been arrived at. As the human eye observes at one time a horse, at another a stag, and as the intellect arrives, from these two

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no other sign of insanity about her, except the enormity of the crime itself. She sung hymns, was peculiarly sentimental, vain, etc. See her biography by her "defensor," Dr. F. L. Vogt, Bremen, 1831, one of the most awfully interesting of books in a psychological view.

[1] Thus, the English papers of the early part of 1837 communicated the following fact, with names of persons and places, so that little doubt as to the truth of the matter can remain. A wager was won in the parish of Rewe by a Mr. Whipple, who engaged to take sixty ewes promiscuously out of his flock and have their lambs penned off from them at a distance; and to go to the ewes, fix upon one, and then proceed to the lambs and select the one belonging to the former; the next time to fix upon a lamb, and then point out the proper dam among the ewes. The wager was won without a single mistake, to the perfect satisfaction of the judges—all impartial and well-experienced farmers.

perceptions, at the perception of a quadruped, or perhaps at that of brown color; so does man feel, at doing certain things, that he ought to have done them or not, and by the operation of the mind constantly analyzing and generalizing he arrives gradually at more distinct ethic notions.[1] Conscience is developed, cultivated, made delicate, in conjunction with reflection, the development of our feelings in general, and experience; but the consciousness of right and wrong is *primordial* and *general.* On this last point I shall say more.

XV. The question as to what conscience is, and even as to its very existence, has become one of the greatest magnitude, since some philosophers have maintained the innateness of certain ideas, and others have denied their existence. It is a fact on record in the history of philosophy that some have maintained the innateness of ready-made ideas, if we may use this expression. On the other hand, those who denied them confounded, in their arguments, ideas, notions, rules, principles, and consciousness with what is arrived at in conjunction with this consciousness by the action of the intellect upon received perceptions. Locke, one of the foremost of those that denied innate ideas, is likewise one of the foremost in this confusion of terms, and, at times, illogical use of them. He calls conscience "our own opinion or judgment of the moral rectitude or pravity of our own actions" (Book I., chap. iii., On Human Understanding), and then proceeds to show that it cannot be inborn, which is quite correct, for the very term "opinion" involves the idea that it is something arrived at by reflection. Reflection is an act of the mind; how can it then be inborn? A faculty may be, an action cannot. But though it is easy to refute this erroneous definition of conscience, he uses, besides, untenable arguments in proof of his position. He applies one of his general arguments against all innate ideas, also against the innateness of conscience, namely, that if inborn they must be as active in the child as in the adult. If this be sound, I ask whether the sense of sight and all the other senses, upon which Locke relies so firmly, be not innate, because Mozart, when an infant of two days old, was certainly unable to distinguish between the sweetest harmony and a grating discord? Is the sense for harmony not inborn, because the savages know nothing of the concord of sounds If not, whence do we derive it? Have the civilized nation agreed to be delighted with accords and to be displeased by discords? Are eighths, fifths, and thirds inventions? Is sight not inborn, because the puppy is born blind? This argument of Locke's rests upon the unfortunate mistake which so many millions of people, whether on his side or not, have committed in confounding the idea of artificiality, or unnaturalness, with that of development. Thousands of the acutest instincts, which cannot possibly be denied to be such, are yet not active in the young animal. Locke, in discussing the innateness of conscience, argues altogether on moral rules, and even then he does not use the proper means; while at other times he says, every one must see the reasonableness of a certain moral act. Nothing is easier than to admit the reasonableness of the actions mentioned by him, if we admit the primordial consciousness of right and wrong; if not, the very word reasonableness does not apply to human actions any more than to those of the brutes. The animal sees no reasonableness in the demand that it must not kill another for trying to get its food, obtained by hard exertion. Locke further opposes the innateness of conscience on account of the variety and disagreement of moral feelings. This is not distinct; moral notions vary, the feeling does not except in degree, but not in kind. For the moral feeling furnishes us with nothing more than the consciousness of the fact that we can and must attribute a moral character to our actions, *i.e.* to ourselves. We waive this point, however, and proceed on Locke's argument itself. According to him, the mind is a blank paper on which our senses write impressions, which the intellect analyzes and combines. Now, by what sense can any moral notion, be it the humblest, enter into our mind? Things themselves are black, large, ponderous, etc., but never moral or immoral, nor are the outward signs or manifestations of actions any more so; for killing, beating, speaking, are neither moral nor immoral of themselves, any more than the axe with which murder has been committed. If then the notion of morality cannot come from without, it must, according to him, be derived from the intellect. But the intellect, unaided by anything else, cannot possibly arrive at any other idea with regard to actions than that of utility, efficacy, expediency, judiciousness, or the contrary. It analyzes and combines the perceptions of things, but it does not infuse new elements of thought or feeling. Again, how can he in his way explain the variety of moral opinions? There is no innate consciousness of right or wrong, he says, because there are various opinions respecting the morality. If so, then there are no innate senses and no innate mind, for the variety of moral opinions would prove this according to himself. The truth is, the variety of moral opinions is owing to the intellect, which operates with the moral and sensual sensations combinedly.

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[1] [But the author has not explained the passage from the general simple idea of right or wrong to the feeling or conviction that a particular act is right or wrong.]

XVI. Some French philosophers, who carried the theory of Locke to an extent which he did not contemplate, but which was nevertheless a consistent progress on the path he had begun, and who did not stop short of absolute sensualism, have endeavored to show that conscience is *made* by education, law, government, etc. The author of a work entitled *Mes rêves, ou l'art de ne pas m'ennuyer*, ascribes the *invention* of conscience to the Egyptian priests in order to complete human civilization—a very useful and wise invention! When was the sense of sight invented?

If we ask how does the idea of good or bad enter the human mind, we are told by the followers of the theory of sensualism, because we have been told so. But who told those that tell us? I declare myself utterly at a loss to conceive, even for argument's sake, how a new principle can be talked into the human soul, not to speak of the impossibility of making anything universal which is not founded upon some principle in the human soul itself. The objection of Locke that moral rules require proofs, ergo that they are not innate, is perfectly correct. Moral rules cannot be innate; for rules are the effect of reasoning; though I shall have to say a word or two on this point also.

XVII. I maintain: 1. Conscience is universal. 2. The uniformity of moral rules is greater than their disagreement, especially with civilized people, with whom this consciousness, therefore, as every other species of consciousness, has been most developed and shows more clearly its essential nature.

1. Conscience is universal. It has been mentioned already that those who deny the innateness of conscience cite, as one of their strongest arguments, not only the difference of moral opinion, but the fact that actually some tribes consider laudable what others punish or would punish as the vilest crime. I do not deny the fact, and shall bring stronger ones than Locke has offered; for they will only become the stronger proofs on our side. That people have burnt and racked their fellow-creatures, Catholics Protestants, and Protestants Catholics—some of whom at least believed they did right while they perpetrated their religious crimes—every one knows but too well. Yet Locke said he believed in the Bible; and all of those persecutors said likewise that they relied for the rectitude of their actions on this book. This, then, according to Locke's rule, must effectually destroy that character of the Bible which he nevertheless ascribes to it. Men relish very different articles of food, and some desire what to others is loathsome. Does there exist on this account no innate instinct which tells us that we must eat when we are hungry, nor any innate sense of taste?

When Bruce first published his account of Abyssinia, people would not believe that the inhabitants of that country feasted upon meat cut out of living oxen close by the fire, so that the steak may be swallowed while yet quivering. Alas! facts worse than this have become known since then. The Battas, a nation of Sumatra, eat their prisoners alive, after regular trial, if found guilty of adultery, midnight robbery, intermarrying in the same tribe, treacherous attacks on a house, village, or person, or if the prisoner has been taken in wars of importance. The prisoner is tied to a stake, and the injured party cuts out first a choice piece, which is immediately dispatched, either grilled or dipped in sambut—a mixture of salt and pepper. Certain parts of the body, as the palms of the hands and the soles of the feet, are considered great delicacies. The heart is also much liked, and many drink the blood through bamboos. What makes this heart-rending account still more appalling is the fact that the Battas have a government, write, cultivate the ground extensively, believe in a God, and have many fine qualities, superior to those of the surrounding nations. The fact cannot be doubted. Sir Stamford Raffles investigated the subject personally, and states it upon unimpeachable testimony in a letter to Mr. Marsden, dated February 27, 1820. (Life and Public Services of Sir Stamford Raffles, 4to, p. 425.)[1] The Battas speak of this cruelty with the utmost calmness.

But we need not go to what we are in the habit of calling savage tribes to find instances of such enormities. The Spaniards who conquered the southern continent of America outdid all cannibals in cruelty, except in the act of eating human flesh. This might increase our physical disgust, but morally we feel more disgusted when we read of Indians being slowly roasted, or worn down by excessive labor, to satisfy the diabolic lust for gold,—when we find the names of mastiffs handed down to posterity because they distinguished themselves in hunting and tearing the Indians, for which their masters received the regular share of booty allotted to an armed man Leoncico was the name of the bloodhound belonging to Nuñez. And all this in return for genuine kindness and humanity; for "the Indians always did more (by way of hospitality) than they were bid to do," as Bishop Las Casas testifies. Refined torments were paid back in return for unsuspicious and kind reception. (See Voyages and Discoveries of the Companions of Columbus, by Washington Irving, Philadelphia, 1831, especially the Lives of Ojeda and Nuñez.)

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[1] An extract from this letter may be found in a volume of a work more generally diffused,—namely, The New Zealanders, page 108 et seq., forming the first part of that excellent publication, the Library of Entertaining Knowledge published under the superintendence of the London Society for the Diffusion of Useful Knowledge.

I was walking one day in the streets of Rome, when I met with a nurse who had strung a number of chafers on a knitting-needle in order to amuse the infant she held in her arm, by the contortions of the tortured animals. When I expressed my horror, the answer was, *Ma non è roba battizata* (but it is unbaptized stuff).

Are these instances, however, anything else than instances of perverted judgment or a moral feeling which has been unfortunately made callous by the former? The Battas, before they eat the prisoner, give him, according to their notions, a fair trial; and what is the fundamental idea of a trial? That justice be done. But what kind of an idea is justice, if not an ethical one? The animal incited to eat its kind would not wait in this case, but destroy the desired object at once. Those Spanish adventurers, cruel almost without parallel, from the meanest of motives—the yearning for riches—were most "chivalrous, urbane, and charitable" towards each other, ready to make any sacrifice. Those that were vindictive, bloodthirsty, and without any faith towards the Indian were magnanimous and full of honor towards each other. (See Irving, as above, chap. xii., Ojeda's third voyage.) The *principle* of morality had, therefore, not been plucked out of their hearts; but bigotry and avarice had perverted their judgment and moral feeling. The Indian was not considered within the pale of ethic obligation.

The Italian girl would have felt very indignant if some other cruelties had been laid to her charge. I have become acquainted with the existence of no tribe, however low or barbarous, which does not consider some things right or wrong independently of their desirableness. The account lately given by Mrs. Frazer and her companions in misery, before the Lord Mayor of London, of the New Zealanders, among whom they were wrecked, and who at times eat their own children, is every way distressing indeed; but these same New Zealanders would probably have been very angry at an ungrateful return to an act of kindness on their part, merely on account of the ingratitude with which their kindness was requited.

I have become acquainted with the life and actual state of mind of many criminals, and never have I met with any convict, however depraved or however proud of the crime he had perpetrated, and however free at the time from all compunction, who would not have felt incensed at the imputation of some crimes or even merely immoral acts, for instance, that of betraying his wife. A remarkable observation I have made is this, that few criminals—I never found yet one—are willing to confess arson. Any other crime will, at times, be readily confessed, but not arson. Why? Because it is more of an imputation upon the honor of the man; because the crime is meaner, *i.e.* more immoral, in the eyes of the criminal, than any other.

The fact that bands of criminals will always form a certain moral code among themselves, shows the inalienably moral character of man, however perverted his judgment and feeling may be by passions.[1] A robber says, "The world has treated me badly, I treat it badly in turn," or, "They are rich, I am poor: why should I remain so?" But within the band the same robber might feel indignant at theft or cheat. The same is the case with smugglers, or with Christian merchants who smuggle opium into China, though they know it leads to the destruction of the infatuated buyers.[2] They may, in their perverted judgment, consider the Chinese out of the pale of civilization, yet the consciousness of right and wrong has not left them on this account. It cannot be torn from the human soul.

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[1] * Quin etiam leges latronum esse dicuntur, quibus pareant, quas observent. Cic., De Off., ii. 11, 40.

[2] * See, for the quantity smuggled into China, Greenbook Ω, p. 106. Davis, The Chinese, i. 454, et seq., gives reports to the emperor, and edicts, which show

XVIII. 2. The uniformity of moral rules is greater than their disagreement. The moral codes of nearly all nations prove it. They all, for instance, disapprove of murder, *i.e.* the taking away human life maliciously or uselessly, but they disagree as to what useless is. They disapprove of theft, but they do not agree on what constitutes theft, *e.g.* at Sparta a youth might steal some things, but only such as the law did not forbid. This will appear much clearer when we come to speak of the general moral law. Here we merely add that there is a natural or innate horror at certain specific crimes, which cannot be denied. We know that man can be reconciled to the worst by custom, yet, on the other hand, it takes time to denaturalize him as to some actions, for instance, murder. In a work of thrilling interest, lately published at Calcutta,[1] an authentic account is given of the thugs—that religious fraternity of strangling thieves in the East Indies. We find there, from the testimony of many thugs, witnesses perfectly respectable, and who are borne out by the most intelligent Europeans resident in the East, that there has existed for centuries an extensive sect of robbers, who have carried on murder and robbing so systematically and professionally that strangling became a species of art, a trade with

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the frightful consequences. The soldiers against the late rebels were found good for nothing, among other reasons, on account of the many opium-smokers.

[1] This work, with which I am acquainted through extracts only, given in an article to be found in the January number of 1837 of the Edinburgh Review, is entitled Ramaseeana, or a Vocabulary of the Peculiar Language used by the Thugs: with an Introduction and Appendix, descriptive of the System pursued by that Fraternity, and of the Measures which have been adopted by the Supreme Government of India for its Suppression; 8vo, Calcutta, 1836. When the article was writing, the printed work had not yet been published. Since the preceding lines were written, a work, Illustrations of the History and Practices of the Thugs, etc., London, 1838, has been published.

proper technicalities and requiring a long and patient apprenticeship. Thousands have belonged to this sect, and not one ever felt remorse at what he had done. Nor was this diabolical trade attractive by its perils and excitements, so as to appease the conscience of the adventurer by his own personal exposure to danger, which not unfrequently appears to the daring criminal as equalizing the state of things between the robber and the robbed. On the contrary, the thug inveigles and tries with infinite patience to gain the confidence of the traveller, until at the proper place and time he strangles his victim while the apprentice holds his legs in perfect security. They infest land and river under all guises, make no distinction as to sex or age, to confidence shown them, or reliance placed upon their protection. The account given in the work alluded to, with all its horrors, the utter absence of what we expect to find with most people, the monstrous perversion of judgment and of religion, which here again is made to appease conscience and to annihilate the simplest elements of morality, for which zealots, barbarians, and criminals have at all ages perverted it, is sickening and humiliating indeed—and probably more so than the barbarity of the Batta when he cuts a slice from his living enemy; yet we must not forget that, monstrous as thuggee is, the thug never pretended to be absolved from the general rule of morality, never denied the difference between right and wrong. He throttles to rob indeed, but the murdered person is but the victim thrown into his hands by Devee or Kalee, the goddess of destruction of Hindoo mythology, and the only one requiring human sacrifices, a goddess acknowledged by all Hindoos, yet especially worshipped by the professional stranglers, her votaries—"several thousands of persons pursuing murder as a trade, generation after generation, not one of whom entertained the least suspicion that he was doing wrong." A convenient mythology of their goddess explained why they pursued murder in this way, and why they were right in doing so, even though they murdered, according to their own confession, for robbery alone. The thug, however, thought no strangled person would haunt him, because the victim thus offered to his goddess went directly into paradise. The thugs are generally amiable men at home and in society, good fathers and husbands, and, with the exception of thuggee (thuggism), belong to the most peaceable class of citizens. But in this book we do not meet merely with facts which show that mistaken religion can silence any voice within us, and mistaken religion more quickly and effectually than anything else; we find, on the other hand, that the human heart requires at least an apprenticeship to become inured to the trade of murder. "They (the apprentices) neither see nor hear anything of murder during the first expedition. They know not our trade;—they get presents, purchased out of their share, and become fond of the wandering life, as they are always mounted upon ponies. Before the end of the journey, they know that we rob. The next expedition, they suspect that we commit murder, and some of them even know it; and in the third expedition they see all." Amidst the testimony of so much cold-blooded murder, the reader feels almost relieved for a moment, by way of vindication of human nature, when perusing the passage in which a witness testifies that his cousin Kurhora was taken for the first time to a thug expedition when about fourteen years of age. By an oversight of the person who had charge of him, while the strangling of many persons was going on, Kurhora escaped and rode up to the scene of murder, where he was so overcome by the shocking transaction that the sight of the turbans of the murdered men made him delirious; he uttered screams at the approach of a thug, and before evening arrived he was dead. We owe an active, well-concerted, and effectual suppression of the thugs to Lord Bentinck, governor-general of India, who has inscribed his name on the pages of the history of civilization by abolishing the suttees, as well as whipping in the native British army of the East.

Not only are moral codes more uniform than it has been frequently supposed, but even the laws of nations. Still, though they were far less uniform, it would prove nothing against our position. We contend here that the moral principle is absolute and universal. Nations may rest in very different ways, sitting, reclining in hammocks, or lying on couches, but all must acknowledge the principle that rest is requisite after exertion.

With regard to the uniformity even of laws, I cannot but conclude this section with an extract from Mr. Michelet's Origin of French Law, lately published. He says:

"We have studied the juridical symbol under the two points of view of its age and its nationality, which diversify it infinitely. Nevertheless, whatever variety may be discovered, unity predominates. It is an imposing spectacle to find the principal legal symbols common to all countries, throughout all ages.

"In truth, to one who considers not the human race as the great family of God, there is in those multitudinous voices, out of hearing of each other, and which nevertheless respond each to each from the Indies to the Thames in reciprocating sounds, wherewithal to dismay the intelligence, to strike the heart and spirit of man with consternation.

"Transporting was the emotion which I myself experienced when for the first time I heard this universal acclaim. Unlike the skeptic Montaigne, who so curiously ferreted out the customs of different nations to detect their moral discordancies, I have found a consentaneous harmony among them all. A sensible miracle has arisen before me. My little existence of the moment has seen and touched the eternal communion of the human race."

Far more striking, however, is the uniformity, or, at least, agreement, of the moral views, when we observe the daily intercourse of individuals and nations. There are many exceptions, undoubtedly, and yet they are after all but exceptions; but they attract more attention because they are exceptions. Let a foreigner, a European, join a caravan of Arabians, and observe how much more they ethically agree than disagree, though born in different climes, nurtured by different associations, reared in different religions.[1]

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[1] * The moral and legal maxims of no nation, perhaps, in this respect are more interesting to us than those of China, because they have been settled and devel-

XIX. One question remains to be answered,—namely, Is not sympathy alone sufficient to explain the phenomena of the moral world, if we consider this deeply-seated feeling under the refining and perfecting action of the intellect? Not a few philosophers have thought that it is.

I do not only admit sympathy as one of the elementary agents in the moral world, but I claim it as the most active primitive element in everything by which man is tied to man. Though of an inexplicable and mysterious origin, though in many cases of a decidedly animal character in its first beginning, yet man unfolds and perfects it to a degree that it stands before us a subject as sacred as anything that can inspire the human breast with pure and elevated feelings. Is there a more sacred relation between man and man than that of a wise and proud mother and her affectionate and devoted son? Yet in its first origin maternal love in the human race is the same instinctive affection we meet with in the brute creation. Nor does it stop here. There are many striking instances of a continued animal affection for the young, which, in default of offspring, passes over to that of other parents. A colored woman has come under my personal observation, who keeps herself continually surrounded with several pets, as she calls the infants which she begs of her acquaintances that she may have the pleasure of bringing them up. The name she gives to these children sufficiently indicates her feeling and relation towards them. It is that fondling love which we observe so strongly developed in some animal tribes. This woman takes no compensation for that which to others would be trouble, but to her affords the enjoyment that every creature derives from satisfying a desire deeply planted in it by nature. Her entreaties to give up to her, but for the limited time of a year or so, an infant, are very striking.

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oped in entire independence of the course of civilization to which we owe ours. The perusal, therefore, of trustworthy and accurate works on that country, is of much value. See, especially, The Chinese, by T. F. Davis, late Chief Superintendent in China, London, 1836, 2 vols.,—especially chapters xii., xiii., and xiv. of vol. ii.

Though so deeply implanted and of so active a nature, however, sympathy is not sufficient to account for the moral character of man. In numerous, perhaps in most, cases, sympathy forms a component part of our moral actions, but in some it is directly opposed to our conscience; cases of this kind are by no means of rare occurrence. The judge who passes sentence on a prisoner is not supposed to be dead to all sympathy with the unfortunate convict. No person that knows anything of the secret history of criminals and of himself can go through a penitentiary without confessing that, had he passed from childhood through the same circumstances and scenes which encompassed many inmates of the prison from their earliest years, he probably too would be in the same unfortunate situation. Yet this individual may be at the same time a strict and conscientious superintendent of the penitentiary. A soldier who fights faithfully and boldly for his country is not on that account destitute of sympathy, not even at the very moment he fires upon the enemy. There is no battle which does not afford evidences of this fact. Sympathy alone, or in conjunction with the intellect only, could not have led man to the idea of morality and immorality, of right and wrong. It would, indeed, have prevented the perfectly clear perception of the idea. It may be concentrated to such a degree that it becomes mere passion, as, for instance, in some cases of affection towards a particular individual, with regard to whom nevertheless no other natural instinct, such as that existing between the sexes, can be alleged, in which latter case love appears to me sympathy concentrated both in its intensity and in relation to the person towards whom sympathy acts Sympathy may be increased to such a degree that it becomes disgusting, because it sinks to a wild, almost brutish intensity "Spencer tells us that once, when he was present at Limerick at the execution of a notable traitor, Murrogh O'Brien, he saw an old woman, his foster-mother, take up the head and suck the blood, saying that the earth was not worthy to drink it and then steep her face and breast in the streams which flowed from his other quarters, while she tore her hair and shrieked most terribly."[1] We are obliged, then, to acknowledge conscience as an original and primitive consciousness, though we allow sympathy to be a most active and indispensable element in man in general, and a powerful coefficient in moral actions.

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[1] I copy this account from vol. i., page 445, of Brodie's History of the British Empire, Edinburgh, 1822.

CHAPTER III.

Ethic Character of Man.—How does Conscience act?—Is it alone an Oracle or perfect Index?—Practical Moral Law.—Man's Individuality.—Morality founded upon it.—Our Ethic Character is inalienable, hence our Responsibility likewise.—Ethic Experience and Skill.—Various Ethic Systems.

XX. Superior intellect, peculiarly expansive and refinable sympathy, freedom of will and rationality (or self-determination of volition) and conscience constitute man's ethic character—his moral dignity, the acknowledgment of which alone is sufficient to make us at once conscious of the great law, "Thou shalt not debase, in thyself or in any fellow-man, man's moral dignity;" a fundamental law from which we derive, in ethics, the duties of man; in natural law, his rights. The very character of the ethic attributes of man involves the direct acknowledgment of the law just mentioned. Conscience tells us so; we cannot do otherwise; we must acknowledge it, it is "a law written in our hearts," it is the law which rests on the consciousness of right and wrong, or by which, as the apostle expresses it, men are a law unto themselves.[1] If it be denied, we could not prove it; if a man should say, I deny the moral value of man, I use every one simply according to my interest or gratification, I want to make my children brutes, I want to kill men as I kill animals—we could do nothing but refer him to his own conscience and to his own acts, inasmuch as he will never allow a wrong done against him to pass without charging the offender with the wrong, or without making him accountable, which is nothing less than attributing to him a moral character. Reason, therefore, which makes us acknowledge this law at once, not by induction, syllogism, or any proof or process of reasoning, is said to possess in this case autonomy, *i.e.* it is its own law; or the law itself as such, is acknowledged at once, from αὐτός, self, and νόμος, law.

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[1] "For when the Gentiles, which have not the law, do by nature the things contained in the law, these, having not the law, are a law unto themselves (ἑαυτοῖς νόμος); which show the work of the law written in their hearts, their conscience also bearing witness, and their thoughts the mean while accusing or else excusing one another." Romans ii. 14, 15.

XXI. The superior intellect of man has been enumerated among his ethic attributes, because it is as indispensable an element of his ethic character or moral dignity as any other which has been mentioned. It is an unfortunate mistake, both in those who pretend to deny the original existence of conscience and many of those who mean to act by it, that conscience consists, as it were, of one list of actions which we ought to do, and another, of those which we ought not to do, or of a sort of gauge, which in each single case will, without previous cultivation or perfection, indicate infallibly what ought to be done, an oracle which needs but to be referred to in order to receive a ready answer. That this is not the case appears at once from two facts: first, we find that people have at times committed the most atrocious acts, not only without feeling any compunction whatever, as in the case of the thugs, but at times feeling actually decided self-applause. There is no ground, that we know of, to doubt that Ravaillac was perfectly at peace with his conscience, as to the correctness of his act, when he plunged the dagger into Henry's heart. Criminal and mean-spirited as at all times many of the religious persecutors have been, there cannot be, on the other hand, any doubt but that many thought that they were doing a most praiseworthy work while they heaped the fagots around a God-devoted heretic. Besides, every individual knows from personal experience that in the moral progress of the soul he will now desist from doing things respecting the morality of which at a former period he never even entertained a doubt. Secondly, if conscience were so simple and clear an index in every given case, however complex, how should it happen that the conscientious find themselves much embarrassed in cases of conflict—the more so the more they are animated by an upright desire to do only what is right?

In this case, as in all similar ones, God has given us the principles, the seeds; but he has not willed to make of men machines without the necessity of their own independent mental and moral life being developed and cultivated. As I said, that this world would not have a moral character if a withering disease were sure to consume the arm that steals, so would the character of man not be much more elevated if actually a sort of list of all good actions were written in the human heart, or if a certain and distinct sign, not to be mistaken, were given at every action by way of approval or disapproval, however complex its character might be, on account of a conflict of the most sacred interests. We are ordained to be men, and not to be impelled in morals in a similar way as we have seen that the animal is by its senses. Man, under all circumstances, should guide his volition by the action of the reflecting intellect. There is a pain we feel at having done wrong—who would say he never felt it? But this very pain, or the pleasure in good actions, is subject to reflection. We have then to cultivate the original consciousness of right and wrong by reflection. Man does not live long, even in the rudest stages of society, without feeling approval or disapproval at certain actions independently of their judiciousness or expediency. These actions are gradually made the subject of reflection, the character of this approval or disapproval is meditated upon, and finally man arrives at certain ethic results, clearly represented to his mind.

XXII. The consciousness that we ought to do right and ought not to do wrong, and the great ethic law, which springs, as we have seen, directly from the ethic nature of man, make it necessary that we should not only express our moral obligation, but, if possible, find a supreme law which may serve as a test for our actions, by which in practice we may be more easily guided—a law, or *norma*, of practical use —the law of virtue, as it has been called. Most philosophers, and many founders of religion, have endeavored to establish a law of this sort, and it is cheering to the human heart to find how many of these have agreed upon so essential a point, though separated by time and space in a manner that they could not be influenced by one another. It amounts practically always to this: "Do or omit that which thou desirest that others do or omit." We have of course to settle what we desire of others, for we might desire very immoral things A debauched person would be perfectly willing to allow others whatever vicious gratification they might desire, provided they allow him to go on as he chooses; and, on the other hand, man rises highest when he is willing to make sacrifices to others which he does not desire others to make for him, when he frees himself from all egotism. Nevertheless, the law will be found of great practical use if applied with good faith, for the very reason that it seeks for the regulator of actions in our self-interest, and, therefore, comes practically home to a greater number of people than any other law that could be devised. The law is especially important with regard to actions towards others, and includes all that belong to justice.

The great philosopher Kant has expressed it scientifically thus: "Consider constantly and without exception the intelligent being as being its own proper end and which can never become a simple means for the ends of another;" and by this other formula: "Act always in such a manner that the immediate motive or maxim of thy will may become a universal rule in an obligatory legislation for all intelligent beings." This fundamental moral law Kant calls, in his philosophical system, the categoric imperative, because it demands without proof, and every intelligent being must acknowledge its necessity, the justness of the demand.

We find in Tobit iv. 15, "Do that to no man which thou thyself hatest." One of the fundamental Chinese works,[1] written about 453 before Christ, contains this dictum: "He who is sincere and attentive to do nothing to others which he would not like them to do to him, is not far from the law; he who desires that nothing be done to him which he himself does not to others."—"Therefore all things whatsoever ye would that men should do to you, do ye even so to them." (Matthew vii. 12.) It will be perceived that this moral law is nothing else than the abstraction or generalization of the primary ethic consciousness spoken of in sec. xiii. chap. ii. of this book, manifesting itself in a feeling "*he ought.*" Man probably becomes conscious of this ethical "he ought" in perceiving the acts of others, and, by natural generalization, is bound, again with the assistance of his ethic consciousness, to include himself in the abstraction by which he arrives at the above law.

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[1] This passage is taken from Tshung Yung (or Invariable Middle), one of the four Chinese works called by the Chinese The Four Books, or The Books of the Four Doctors. See Abel Rémusat, Nouveaux Mélanges Asiatiques, Paris, 1829,

XXIII. Man's whole ethic character is materially founded upon or can be imagined only in conjunction with his individuality. Man's individuality and sociality form the two poles round which his whole life revolves. Of the latter—the peculiarity in man that he can fulfil his destiny in a state of society with others only, and that he has to bear weal and woe jointly with his fellow-creatures—I shall have to say more in the second book. As to his individuality, it is necessary to observe that man is what he is, first and essentially, as an individual. His senses, perceptions, thoughts, pleasures, pains, emotions, his reasoning, appetites, and endeavors, are individually his own, as much as his eating, respiration, digestion, are individually his own. Philosophically speaking, he cannot act through another;[1] his acts are his own; for if he be

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vol. ii. p. 112.—The Invariable Middle treats in thirty-three chapters of the *middle*, a sort of moral state towards which all human actions ought to have a tendency, and which alone is compatible with the inspirations of heaven, the objects of nature, the voice of reason, the dictates of wisdom, and the practice of virtue. The author of this work was the grandchild of the great Confucius; he died, sixty-two years old, about 453 before Christ. His surname as philosopher is Tsze-sze, translated by the missionaries into Interpreter of Holiness.

[1] When we say in common life, "he acts through an agent," we mean, philo-

forced to do anything against his will, he does not *act* in the philosophical sense of the term, but he *suffers*, is in a passive state. Action presupposes free agency. Man's responsibility is his own, for his reasoning and acting are his own. Fault, crime, virtue, excellence, goodness or immorality, are his own, and belong exclusively to the individual. Words have either a sense or not. If the words Accountable or Responsible signify anything, they involve the idea that I might, and, if I have acted wrong, ought to have acted differently, which presupposes free will and individuality. For if my hands are bound I cannot be accountable for not assisting a fellow-creature in distress, nor have I free will except with regard to myself, because my volition is confined to myself, whom God, for this purpose, has constituted as a definite individual. "God, who will render to every man according to his deeds." (Rom. ii. 6.) "Single is each man born; single he dieth; single he receiveth the reward of his good, and single the punishment of his evil deeds." Ordinances of Menu, translated by Sir William Jones, London, 1799, ch. iv. p. 240, or page 19 of vol. iii. of Sir William Jones's Works, 4to edit.

He alone that *wills* acts, and he that acts is responsible. If a man lets loose a tiger upon a multitude, knowing the nature of the tiger, he is the murderer of all whom the tiger may kill, and the maimer of all whom he may lacerate and wound. For the tiger is bound, following simply its sensualism, but the man is free.

Trite as these remarks may appear if thus clearly and separately stated, they have been by no means always acknowledged either in religion or law.

XXIV. The penal codes of all civilized nations recognize individual indictments and punishments only. No body of men, corporation, or society can be arraigned for a penal offence, though each and every individual may have borne an active

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sophically speaking, that he himself acts, and by thus acting induces his agent to act likewise, so that there are two acting individuals. No action without individual.

share in it, because, as has been stated in the preceding section, responsibility is and forever must be inseparably connected with individuality. A body of men may be sentenced to damages; for they may civilly form a so-called moral person in the eye of the law, that is to say, a society with certain peculiar civil rights and obligations common to all the members; but no ethic idea is connected with such a damage, and the whole body cannot be sentenced to imprisonment for a crime, though each individual member may. Those only who committed the crime, *e.g.* by voting for it, or having a hand in executing it, can be made responsible. Thus, a merchant is not liable to punishment because his partner committed forgery, though closely connected with the commercial transactions of the house. Confusion of ideas, which in the course of civilization almost always precedes clear distinction, as well as a desire of revenge, have often induced man to act upon opposite principles. An interesting instance of this confusion of ethic ideas will be found below.[1] When the Robespierrian Committee of Public Welfare was brought to condign punishment, Carnot, though one of its members, was exempted.

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[1] The following appeared to me so remarkable an instance of deviation from the principle that all morality is inseparably connected with individuality, that I have felt induced to give it here. I was lately in the island of Porto Rico when a case occurred, which, whatever low idea we may entertain of Spanish administration of justice, still remains most surprising. An American and the chief partner of a commercial house in one of the sea-ports was absent on a journey, when his junior partner received, by way of pay, several packages of maccacuina money. Without counting them, or examining their value, he passed them off again in the regular course of business transactions. This is done every day. At that time, however, a large importation of spurious maccacuina had been made, and the counterfeit money began to circulate. It was strongly suspected, and perhaps more than suspected, that persons high in authority had shared in this foul transaction, and they were now desirous of fixing the guilt on some individual or other who had not participated in the crime. Be this as it may, a witness testified under oath that he had received a package with counterfeit maccacuina from the junior partner of the house mentioned above. He declared that he had passed the package as he had received it, which is done every day, as I have stated already, and that he could prove that he had done so. This declaration was of no avail. It was said, You have passed the counterfeit money, no matter where you got it or how you passed it. This was one step in the affair. The next was, the declaration, or assumption, that the gentleman ir

When it is said, a state or nation is made answerable for some wrong done to another nation, the term is not used in a strictly ethic sense. Wars cannot be undertaken for the sake of punishment, speaking accurately; because wars can exist between independent states only, one of which, therefore, has no right to punish the other, which would presuppose a lawful power over it.

Punishment in this case means merely a resorting to that means which the warring nation considers as the most suitable to prevent a recurrence of wrong or to obtain restitution. A similar sense must be given to the word punishment, when whole provinces or any entire body of men are said to be

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question had done so as junior partner of the house; the third step, that the senior or chief partner is the most proper representative of a commercial house; and the fourth step was, that the latter was arrested, on his return from a journey, for the alleged crime of his house having passed, and therefore probably imported, the counterfeit money. Nor was this the rash act of some ignorant officer, but the gentleman remained a considerable time imprisoned, and was not finally released on the ground that he could not possibly be answerable even if a crime had been committed by his junior partner. The monstrosity of the transaction shocks every one, even if he had never before clearly represented to his mind that virtue or crime, in short everything of a moral character, is essentially connected with individuality. No wonder that Spain and all former Spanish colonies are suffering from endless political convulsions, if the people grow up with such utter confusion of the most elementary notions.—Napoleon made the parents and near relations answerable for the desertion of the son or relative from the army. Bad as this measure was, it was never pretended, at least, that the responsibility for the act of desertion could possibly be separated from the individual who ran away; but it was adopted by way of bare expediency. It was believed it would induce the soldier, who otherwise might have no interest to stay, *e.g.* when he was from some German conquered department of the empire, not to run away; the parents or relatives were held as hostages. The Chinese code continually makes the father answerable for the son's crime, and in many cases the whole family is punished and even put to death for the offence of one.—They have a maxim that a married woman can commit no crime; the responsibility rests with her husband: Davis, u. s. ii.; chapters on the code, i. p. 282.—[Dr. Lieber, in another paper, remarks that none but individuals can be responsible for penal offences, and cites Ch. J. Raymond as saying, in 1730, that while a warden was answerable civilly for the acts of his deputy, he was not criminally.]

punished, for instance, by the imposition of a fine, or the withdrawal of a charter.

That in such cases the innocent have to suffer with the guilty, is the reason why nothing but absolute necessity should induce men to resort to these measures; and when absolute necessity of doing so exists, it affords only one more proof that man is imperfect, a being who cannot, in many cases, mete out the due reward to the guilty without affecting at the same time the guiltless. We are finite, and have to regulate our actions accordingly; while the consciousness of our frailty, our finiteness, and the consequent deficient character of all human justice, will lead us to a still firmer belief in a perfect and supreme being, whose justice is perfect and absolute; who can be just without affecting the innocent. If we contemplate for a moment the essential character of justice, founded upon man's accountable character, and this again upon his individuality, we see at once that if man is unable to act out these principles, this very fact is one more proof of his imperfect nature; but it is a gross mistake to use that which is only the effect and proof of human imperfection, in order to explain, by way of analogy, preconceived and erroneous notions of the Deity. I cannot pass this remark without adding that analogy, if used as proof and not simply as illustration of what has already been proved, in matters relating to the Deity, is presumptuous and necessarily of a dangerous character, since it induces man to do that to which he feels ever too much inclined in his limited and finite sphere—to ascribe to the Deity his own finite attributes. Bishop Butler, in his work on the Analogy of Natural and Revealed Religion, appears not always to have escaped this fallacy.

The individuality upon which all accountability or responsibility is founded, shows at once the crying injustice of all punishments which extend beyond the offender farther than their mere effect, according to the social existence of man, is unavoidable; for instance, by way of affliction of respectable parents at their son's disgrace, or the misery of a wife caused by the imprisonment of her husband, or the diminution of the inheritance of children by a fine imposed upon their father. I mean punishments such as confiscation of all property, civil disgrace of whole families, attainder of blood.

XXV. All ethic attributes of man are inalienable. He cannot, even were he desirous of doing so—and his wickedness in doing so would be equalled only by the absurdity of the desire—deprive himself of his moral character. Do what he may, or let others attempt what they choose, man does not and cannot become a non-moral or un-ethical being. He cannot barter away his reasoning power for whatever consideration; for every moment that he adhered to such a compact, he would have to exercise his reason. Nor can others possibly deprive him of it, though they may greatly limit its action; he cannot alienate his free will and decide to be guided entirely by some one else. He must decide for himself, his conscience tells him so; nor can others fetter his will, which belongs to man's rationality. He cannot bargain away his conscience and responsibility, because he shall and must be responsible, for he is not bound in his will and real action. He cannot submit to absolute obedience in whatever sphere this may be, because he cannot, if he choose, get rid of his ethic attributes, and he cannot divest himself of his individuality, and therefore others cannot take his ethic responsibility upon themselves. There it hangs suspended over every single soul, "Thou art a human being, and, therefore, responsible, consequently thou must reason and will; and thou hast reason and conscience, and, therefore, art responsible." No power on earth can obliterate this fundamental principle from the table of ethic laws. As thou eatest and drinkest for thyself, so thou actest for thy own soul. What man is in mind and body, first of all he is as an individual. Yet he was not made to be selfish, and his Creator connected him with his kind by a thousand ties—by sympathy, love, friendship, and by the mysterious attachment growing out of the difference of sexes; he led him to the foundation of the family, which became the first starting-point of moral cultivation, and the hearth on which the flame of a thousand things that are sacred and noble burns with its holy fire.

It is this difference, that every human being has a moral character of his own, and that consequently, as we have seen above, we ought in no instance to make another human being merely the tool of our ends and objects; and that the animal is a non-moral being, a thing—from which we derive our justification of killing animals for food, or, still more, of submitting them to great pains and suffering for the sake of science, the right to which will not be denied, though we all feel that it ought to be resorted to with the utmost care, not forgetting the painful feelings of the great physiologist Haller, in the evening of his life, at all the suffering he had inflicted on animals. Not a slave, nor even a criminal, becomes a non-moral being, and it is immoral to experiment upon criminals, should they be subjected thereby to sufferings.[1] I know of an instance where the surgeons of a regiment disagreed on some point of anatomy, and an officer promised to provide them with a subject, by ordering his soldiers to shoot one of the enemy's outposts. The officer did not do so, yet he was officially censured even for his promise.

XXVI. Though, however, it is engraven in every heart that we ought to do right and not do wrong, and though the simplest intellect will be ready to acknowledge our obligation to obey the fundamental moral law, as given above, yet its application to the endless variety of cases which offer themselves through life requires experience in a twofold way. It is often easy to find the abstract truth, but difficult indeed to apply truth ever the same to ever-changing reality. Experience is required:

1. Because in many cases doing right means nothing more

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[1] * "The servant, nay, even the slave, is not bound to obey, and moreover is not excusable for obeying, the unlawful commands of his master." Letter of B. W. Leigh, then Senator of the U. S. from Virginia to the General Assembly of Virginia, March 2, 1836.

than selecting that which experience has shown to be the best. If we find that a certain action, measure, or step, though in itself entirely indifferent, has invariably or generally produced evil consequences, we act immorally if we disregard the result of experience, and we act likewise immorally if we neglect making ourselves acquainted, to the best of our powers, with this result of experience. As all politics are in a great measure dependent upon experience, and consist both of the abstraction of general ideas from numerous individual cases, and the application of abstract ideas to ever-changing cases of practical life, it is clear that judicious application of well-understood and honestly consulted experience forms a most important part in all ethical relations applied to politics. Some acts are strictly moral or immoral, others belong to the sphere of wisdom and foresight (*σοφία* and *εὐλάβεια*). The line between the two, in many cases, can hardly be strictly drawn, or, if it could, it would be of no use, as the one is as important as the other.[1]

2. Experience is requisite with regard to the habit, practice, skill, exercise, and application which we have to acquire in applying the science of morals. It is in ethics as in the science of medicine: the science gives to the physician the general rules; but how to combine them, and that with rapidity, for a given case, which consists of a number of simple cases, singly treated of by the science, and each modified by the other, practice alone can teach. Wherever a science is to be applied, the *art* is requisite in addition to the science; and who is there that has lived sufficiently long to gather experience and does not acknowledge that an ethical skill, or art, is requisite in life? Who would deny that moral practice is indispensable for the numberless cases of duties conflicting with each other? The art of fencing teaches us the exact position of the hand, the single and well-defined thrusts, and how to direct them to one small particular spot. No one who does not learn these

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[1] "Be ye therefore wise as serpents, and harmless as doves." (Matt. x. 15.) Life is short, but art is long. *Hippocrates.*

elements of the arts well can ever hope to become a skilful swordsman; yet the art cannot teach all possible combinations, or substitute any rule for the quick discernment and rapid judgment which, in the twinkling of an eye, knows how, almost instinctively, to apply the elementary rules which have become like a second nature to the hand, or finds with rapidity resources in the powers of combination well trained for this particular art. So can no system of morals *dictate* what is to be done in each case. No one will expect that a book can or ought to do that for which, indeed, we are placed in this world,—the acting as moral beings.

Knowledge of morals alone, without practical skill, will lead to moral pedantry, an adherence to single truths at the expense of others—an error the more to be shunned, as those who commit it, and suffer in consequence of it, are apt to consider themselves as martyrs of morality or truth. This is especially the case in politics, in which it is so easy to single out one truth, one maxim, one principle, and to follow it up unconcerned about other equally important ones. It is generally the choice of weaker and less comprehensive minds, and may lead them to a variety of injurious acts and crimes, though under plausible forms. History is full of these examples. Generally the most essential points which opposed parties claim are true enough in themselves. But it is not sufficient that we acknowledge a truth; we have conscientiously to endeavor to know the truth. Skill, without a knowledge of morals, degenerates into mere expediency, an equally great and dangerous defect in morals.

XXVII. Having acknowledged the first principle in ethics, that man has an inalienably moral character and cannot by his own consent or the force of others become a non-moral being, various systems of ethics may be established. Not that what is once proved to be immoral by one system can be shown to be moral by another, but we may build up different systems according to the different ways which we may pursue in arriving at settled ideas and defined notions with regard to morals, or according to the main subjects to which we apply ethics.

We have already seen, from the etymology of the word ethics, what way the Greek nation has pursued in arriving at clearer ideas in ethics, and finally combining them into one system. Common sense, common justice, common interest, soon leads men to certain customs, to observe certain rules, without which intercourse and mutual understanding would be impossible. These customs in real life formed a subject for reflecting minds, to find out that which is stable in them, and why it is stable, as contradistinguished from what is variable, accidental, unessential. "From ancient times, men have found out what is good and right; from which we ought to learn. And one of these things is, that every one consider well what properly belongs to him." (Herodotus, i. 8.) This has been the course with all nations. Common sense necessarily precedes the science. See a very true passage on the meaning of words which common sense gives them, and which science at a later period strives to ascertain and express, in Mr. Guizot's General History of European Civilization, Lecture I.

As ethics first thus gather what by common sense has been established among men, so may ethical systems be raised upon the moral precepts deposited in some other way, for instance in religious or civil codes. Thus, we have Christian ethics, *i.e.* a system of morals founded upon the moral precepts contained in the Bible; we have even evangelical Christian ethics, which means a system of morals founded upon the Bible when this code is taken and understood in the way peculiar to Protestants.[1] In a similar manner we have to understand the expressions Mahometan, Homeric, Hindoo ethics.

Ethics are general; but by applying them to some prominent situations or important characteristics of man, *e.g.* his social character, we obtain special branches or systems of ethics.

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[1] For instance, a work by Professor Schwarz, at Heidelberg, entitled Ethics of Evangelic Christianity.

CHAPTER IV.

Man, a Being having his own End and Purpose, or an *Ens autoteles.*—Natural Law.—Its only Axiom.—Its Object.—Difference of Natural Law and Ethics. —Science of Politics.—Disastrous Consequences of confounding Natural Law and Politics proper.—Good Faith necessary wherever Man acts.—Political Ethics.—Its relation to the other Sciences which treat of Man.

XXVIII. We have seen that every man, as man, has his own ethic worth and value; he is in this respect not only his own object, but in consequence of his reason and free will he can and ought to make himself the conscious object of his own activity; in other words, he shall consciously work out his own perfection; that is, the development of his own humanity. For this reason man has been called by the old philosophers *ens autoteles* (*ens*, being, *autoteles* from αὐτός, self, and τέλος, end), a being that is consciously its own end and object, to distinguish him from other animals. This, as is evident, is again indispensably connected with man's individuality. Ethics having established these points, it is the object of another science, natural law, or, as others have called it of late, *e.g.* Mr. Rotteck of Freiburg, rational law, to show the rights which man has according to his inherent, inalienable ethical nature.

XXIX. Every science, even mathematics, has to start from some axioms, that is, from truths which must be either supposed to have been proved by other sciences, or are self-evident in their nature. The very meaning of proof involves its starting from and relying on previously acknowledged truths. For every syllogism we want first two terms, to make our conclusion; the axiom therefore is a truth the convincing and binding power of which we cannot help acknowledging without the logical process of deriving the conclusion from the term and middle term.

It appears to me that the only axiom necessary to establish the science of natural law is this: "I exist as a human being, *therefore* I have a right to exist as a human being."[1] This once acknowledged, the rights of men in their various relations as individuals, husbands or wives, fathers or mothers, as citizens individually and collectively in the state to other independent states and to the collective citizens within the state, may consistently and justly be established. Though some ancient and modern writers have maintained that no right exists antecedent to the magistracy, deriving the right of this from some extra-political, and in some cases even from some extra-human, source, it is nevertheless true that, if we do not deny our own existence and the existence of truth, the reality and truth of natural law can be scientifically and irresistibly established with as much certainty as that of other sciences. Spinoza (Epist. 74), who, it will be admitted on all hands, might be charged with anything rather than too great a readiness to admit unwarranted truths, justly remarks, "Quomodo autem id sciam si roges, respondebo, eodem modo ac tu scis tres angulos trianguli æquales esse duobus rectis, et hoc sufficere negabit nemo cui sanum est cerebrum nec spiritus immundos somniat, qui nobis ideas falsas inspirant, veris similes."

Natural Law, then, inquires into the rights of man to be derived from his nature, both physical and moral, for the latter is closely connected with the former; it inquires into *quid sit justum aut injustum*, not into *quid sit juris* (what is law or lawful). The word nature is a term used in so many various significations that it has led to great confusion of ideas in several branches; and it is not an uncommon mistake to believe that natural law is that law which existed in the erroneously supposed state of nature, on which, as has been indicated already, I shall have to dwell in the next book. The law of nature, or natural law, on the contrary, is the law, the body of rights, which we deduce from the essential nature of man. It is, therefore, equally erroneous to contradistinguish or oppose natural law to revealed law, for the latter can only be founded upon the former, since by the nature of man we understand that imprint and essential mode of existence which he received from the hands of his Creator. They cannot conflict.

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[1] [It being, of course, understood what a human being is in all his relations, and what ought to take place when those relations are disturbed.]

Nor are natural law and moral law or ethics the same. The difference is material. Ethics treats, among other subjects, of the duties of man, and secondarily of his rights derivable from his duties; natural law, on the other hand, treats, as the fundamental and primary subject, of man's rights, and secondarily of his obligations flowing from the fact of each man's being possessed of the same rights. This distinction, though essential, has been and to this day is frequently overlooked. An equally good name with that of natural law might be abstract law or pure law, as we have pure mathematics.

XXX. Natural Law having ascertained and established that which is right from the nature of man, it is the subject of another science to ascertain the best means of securing it, both according to the result and conclusion of experience, and the demands of existing circumstances. I would call this branch politics proper. An instance or two will illustrate the subject. If natural law shows from the fact of every man's being a moral being, who has his own end and worth, and from the consequent impossibility of his becoming a non-moral being under whatsoever circumstances, or of losing his individuality, that the state must offer protection to every one, or must cease to be a state so far as he is concerned who is denied to have a right to derive any advantage from it; or if it shows that all men are equal in this respect, that each one has his own ethic worth, and that this equality forms the only true foundation for justice; it would, on the other hand, be a question of politics proper to ascertain how the many ends of true justice are to be obtained. If natural law establishes the general right to property, namely, that it is founded in the unalterable and indispensable nature of man that exclusive possession of things belonging to the material world should be vested in individuals or individual societies; it is for politics proper to ascertain whether, under certain given circumstances, this general right of property is best secured by representative governments, by the trial by jury, by unlimited possession, or by revertible titles, as was the case in the Mosaic law; whether the general principle demands, under the given circumstances, that the accumulation of property as well as its division should be unlimited, or whether it is wise to prevent division below a certain standard, as is the case in Sweden and some other countries, or prevent accumulation beyond a certain limit, as Solon prescribed. The whole great question of constitutions, with respect to everything that is not strictly a principle of natural law, *e.g.* protection of personal liberty, of freedom from molestation as long as no wrong is done, of a degree of protection extended even to the evildoer and while we bring him to punishment, belongs to the present branch. Shall we have two chambers, or one, or three separate estates, or four? How long shall the membership of the upper house continue? for six years, as in the United States, for ten, or for life, as has been the case in France? Who shall bestow it? Once bestowed, shall it be hereditary, as in England, or shall the house consist of some hereditary peers and others holding the place for life, as in Holland, Bavaria? Shall prelates belong to it? Does not the crown increase its influence if it has the right to make peers for life only, because the opportunity of conferring the peerage returns more frequently, and the whole body feels more dependent upon the crown? Does the increased independence of a hereditary peerage upon the crown promise on the whole more advantage to the people by uniting with them against encroachments of the crown, or disadvantage by continued opposition to cherished measures of the people? Is it advisable to have female monarchs, where monarchy is necessary? Are they or are they not in their nature, as belonging to the weaker sex which is universally excluded from public business, peculiarly jealous of their rights, suspicious of opposition, and high-toned in holding on to their prerogatives; and, if so, are the advantages to be derived from an order of succession which includes females greater than the disadvantages? Which mode of voting promises the greatest advantage, that by ballot or by open votes? By which mode is, after all, greater independence and a less degree of intrigue obtained? Is an election of electors best, or a direct election? Shall judges be appointed for good behavior, or for a limited time? What shall form the basis of representation, property, number, education, or a combination of them? When shall a man be of age? Is it good that the executive be dependent upon the people for supplies? Ought the crown to have a distinct crown treasure? On which side are the greatest advantages, where the executive ministers are members of one of the houses, and if so, where they have a vote or not, or where they are excluded, as in the United States? How is the appointing power of the executive to be limited? How, altogether, is the great problem of giving sufficient and yet not too much power to the executive, to be solved? All these questions cannot be solved on absolute grounds; it is experience alone, soundly viewed and impartially applied to existing circumstances as well as the principles ascertained by natural law which can guide us respecting these subjects, many of which are, nevertheless, of vital interest.

The confusion of natural law and politics proper has produced evil, and not unfrequently disastrous consequences. On the one hand, men have seen that, without establishing firm and absolute principles, all would be confusion and insecurity. On the other hand, they have been so far misled by principles drawn from natural law, as to judge every political question by theory alone, disavowing experience, expediency, and a due regard to the elements which were given wherewith to work. The impossibility of proceeding in this way never fails soon to be felt, and the very disowners of expediency or the necessity of making measures practical have committed the most tyrannical outrages, not unfrequently founded alone, and acknowledgedly so, on absolute expediency as preparatory for that perfect state to be founded upon absolute theory. Such men we find in the Jacobins in France, whose absolute theory was what they called philosophy; and in the early Scottish Presbyterians, whose absolute theory was their notion of divine government.[1] Again, men felt that the abstract principles of natural law were insufficient to guide them in many practical cases, and they fell into the error of rejecting it altogether, relying only on power as the foundation of all right, on mere expediency as the sole guide of political action.

Analogous to the term abstract law for natural law, we might call this branch applied law, which would include both political, civil and penal law, in as far as it remains general. The existing law is called positive.

XXXI. Wherever the application of a principle or rule is required, whenever an abstract principle passes over into practical life, conscientious action is required, or it will fail to obtain its object. No prescription or form of words, no law or institution, can serve as a substitute for this essential element of human action. It is therefore necessary to ascertain by what moral principles we ought to be guided in certain specific political cases, and what it is that experience points out as the wisest course for a conscientious citizen, under the law and in relations established by the two former sciences. And this branch in particular I call political ethics.

If, for instance, politics proper establishes that, for certain purposes and under certain circumstances, it is necessary that the votes of the members of a state ought to be taken, but that the law ought to leave it to the option of each citizen whether he will vote or not, it belongs to the province of political ethics to ascertain whether every citizen is morally bound to vote under all circumstances, and, if not, to point out the cases when he ought to vote, not according to the law, but in conformity with his moral obligations as a good citizen; when he need not, and, finally, when he ought not to vote.

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[1] See Brodie's excellent History of the British Empire, *e.g.* in vol. i. the discussions between James I. and the Scottish Presbytery.

If the former branch establish that general rules of action or laws must be established wherever a society exists, and that these laws ought, of course, to be obeyed, for without it they would not be general rules; and if, at the same time, that branch has to define the subjects on which society may or ought to legislate, and those on which no general rule ought to be given; it belongs to the department of the branch with which we shall occupy ourselves, to ascertain the cases when, or laws which we may disobey and those we are morally bound to disobey. If we find that in free countries an opposition to the administration is not only advisable, but highly desirable, political ethics must show how far a conscientious citizen may go in his opposition.

That in many cases it will be difficult to ascertain with precision to which of the two branches a subject belongs, is clear; as there is no absolute line of demarcation for any science, except that of mathematics, which circumstance gives so great advantages to the science, and again confines it within so narrow limits. Nor has this uncertainty any injurious effect; for if the subject be but fully, philosophically, and conscientiously treated, it does not matter so much where it is done.

What has been said of the necessary combination of prudence with what is strictly ethical on its own ground, in general ethics, finds most ample application in this particular branch of applied ethics; in no branch of morals, indeed, so much so as in this. With Themistocles, every citizen ought to advise on what is prudent; with Aristides, on what is just and good.

XXXII. Political ethics would apply to municipal political relations as well as to international relations. But international law, as Mr. Bentham has more significantly called what before him was styled the law of nations, forms so distinct a branch of natural or positive law, according to the point of view which may be taken, that I hope the critic will excuse me if, at least for the present work, especially calculated for less mature readers, I drop the subject of ethics as applied to international intercourse, and occupy myself solely with ethics as applied to municipal political relations. Yet I would guard myself against a suspicion that I undervalue the moral element in the intercourse between independent states No one can have studied history without coming to the con clusion that morality is of urgent expediency in the intercourse of nations, even were we not bound on higher grounds to acknowledge our ethical obligations, which never leave us, even in these international relations. The few truly magnanimous international acts which history records have, I believe, failed in no instance to produce the most beneficial results, while the age of diplomatic cheat and trickery brought misery over all Europe. What had Louis XIV. gained, towards the end of his days, by an unusually long and active life of political fraud, faithlessness, and immorality, which totally disregarded justice or the sacredness of engagements?

XXXIII. If we wish to assign the proper rank to what I mean by political ethics, among all the sciences whose subject is man, it would be this: man can be considered as he is, or ought to be, and as he has been; again, individually or socially; again, physically, morally, or intellectually. Individually, physically as he is, man forms the subject of anatomy, comparative anatomy, physiology, etc., or medicine. Socially, physically and as he is, by political economy. Individually, morally, as he is, and ought to be, by ethics, the science of education, etc. Individually, intellectually as he is, by the philosophy of the mind, or, according to English terminology, by metaphysics. Socially, according to the relations of right, as it ought to be, by natural law, politics proper, etc.; as it is, by diplomacy, positive law, etc. Socially and morally, by political ethics. Socially and intellectually, by the science of national education. or, in general, national civilization. The two relations of time as it is and as it has been, together with the ethic relation, as it ought to be, give, applied to law for instance, the positive or existing law and the history of law; natural law and theoretic politics.

All right, as we have seen, starts from the moral character of man, and ethics, again, applied to man's political relations, has to shed light upon the many relations within the confines of the law, upon those actions which the law leaves wisely to the judgment of the citizen, and which yet are of great importance to the whole well-being of the commonwealth. I repeat, it is this branch of applied ethics which I call political ethics.

CHAPTER V.

Does Political Ethics deserve to be treated separately?—Can Ethics be applied to Politics?—The People at large ought to know their Political Duties.—Political Ethics is not for the Statesman alone.—Demoralizing Effect of a Politically Debased Society upon the Individual.—Political Ethics especially important in Free Countries.—Attempts of Governments and Nations to justify Public Crimes, which proves that Men agree that public Acts ought to be founded on Ethic Grounds.—Ethics cannot be applied to Politics precisely as to Private Relations.—Mere Expediency; mere Theory.

XXXIV. If it has thus been shown what place in the chain of sciences political ethics occupies, and what forms the subject-matter of this division of ethics, it remains for us to answer two questions:

1. Though they may be important, are they sufficiently so to be treated separately? for in a similar way we might separately discuss family ethics, or forensic ethics, meaning by the latter a system of duties concerning the citizen in a forensic character, as judge, juryman, lawyer, even as witness, informer, or prosecutor.

2. Is politics really a subject to which ethics can be applied? For it cannot be denied that the actions of many persons indicate that, according to their opinion, little connection exists between the one and the other, or that, according to their desire, little ought to exist.

XXXV. As to the first, whether political ethics forms a branch of sufficient importance to be treated separately, we must refer to the next book, by which it will be seen that man, or at any rate the least elevated races of his species, cannot exist without the institution called the state, because he is essentially a social being, according to his animal propensities and organization as well as his intellectual faculties and moral characteristics. Yet a man may be a dutiful son, a loving brother, a kind husband, a judicious father, a faithful friend, a charitable neighbor, industrious in his calling, a sincere well-wisher to his species, and still he may omit a strict performance of his duties as a citizen. He may even boast of his political apathy. So that it appears necessary that we should know all our civil obligations. Whenever nations have risen to a high degree of civilization, they have reflected on the art of government, the principles of legislation, and the origin and object of the state; wherever man has omitted to do so, he has relapsed into barbarity, or never elevated himself above it. Man cannot be what he ought to be, without the state, and nations rise by wise laws; never do they maintain themselves, after having risen in an elevated position, except by good laws and sound institutions supported and carried out by active patriotism. Europe on the one side, Asia on the other, form the mighty commentaries which history has written and continues to take down upon these truths. There is no nobler sight to contemplate, no object more invigorating to dwell upon, than a man of manly energy and wisdom welded and wedded in vivid patriotism to his country, living and laboring faithfully, in glory or difficulty, honored or misjudged, wisely, firmly, steadily, and devotedly, for his people. No one contemplates a Turgot, De Witte, Sir John Eliot, Washington, Epaminondas, Chatham, without feeling the better, the more reassured for it.

XXXVI. Many subjects, however, though useful or necessary to some, are not so to every one. Political ethics may form a very proper branch for a leading statesman, or the citizen who makes a profession of politics, yet ought it to be well understood by everybody? Is it, in particular, necessary to instruct the young in it? I believe it is most emphatically so. It is every man's business to know his duty, and his duties as citizen are among the most sacred and important, especially so in countries which enjoy civil liberty and have what is commonly, though inaptly, called a free government. The success of the whole depends upon the whole; and there is no subject connected with the state which does not vitally affect the interests of every one. Laws and institutions are nothing more than dead forms of words, unless they *operate.* Constitutions do not *create* liberty; political welfare cannot be decreed or effected by an edict or statute. Liberty must grow and live, live in the heart of every one, not only as an ardent desire or an indefinite though exciting notion, but as a knowledge of our political obligations and a profound reverence for political morality. No William of Orange can free his countrymen from the Spaniards, no Thrasybulus can rescue his city, no Solon can make her prosper, though the laws he gives were inspired, if they find not support in every bosom; if there be not the chord to vibrate in unison with them; if the mass of citizens are not willing to follow, *because* the leader acts right and wisely. The wisest statesman is in this respect but like the poet. He cannot delight, elevate, or inspire, unless the elements to act upon are in the hearts of the hearers. He cannot make new truths, and, if he could, how could he gain entrance for them into the hearts of the people who were wanting in the very sense to perceive them? But he can boldly and strikingly pronounce what until then was but dimly felt in the soul of the hearer, or latent though unperceived in his heart. So can the statesman clearly pronounce and boldly act out or gradually cultivate what was but vaguely felt by the masses; he can concentrate what was scattered, awaken what was dormant, impel, regulate, restrain; but he cannot create his elements. Harrison, in his Political Aphorisms, says, "The people cannot see, but they can feel." If so, it is the duty of the statesman to see, and his foresight cannot be acknowledged unless the people feel right and are well instructed. The freer a country, that is, the more action is guaranteed to every individual, the more necessary becomes a well-founded and general knowledge of political duty. Without it, that free action will serve but for evil ends.

XXXVII. No doubt can be entertained but that there are at all times, among millions, some individuals endowed with great gifts, with talents equal to those of the eminent and successful men of happier periods, but they cannot make and construct a state and breathe into it the inspiration of life, nor can they guide it by the noblest principles, if the people do not correspond to their exertions, or if the times do not call upon them. And what are the times but the acts of the people? Was there not in all Italy one great soul left at the times of the emperors, not one who at the fairer periods of the republic would have won the civic crown?

XXXVIII. The state is so intimately connected with nearly everything which concerns man, all our interests are so closely interwoven with its weal, that it cannot prosper, or fail of being a source of injury, without a faithful and correct discharge of duties on the part of every citizen. The state—the greatest institution on earth—elevates everything that appertains to it, every duty, interest, or measure, into great importance, for the simple reason that it affects all, and, what with its direct and indirect operation, it very materially influences the moral well-being of every individual. Cicero justly acknowledges the sacredness of this institution in the sight of God, when he says, " Nihil est enim illi principi Deo, qui omnem hunc mundum regit, quod quidem in terris fiat, acceptius, quam concilia et cœtus hominum jure sociati, quæ civitates appellantur." (Somn. Scip., c. 3.) The state (with its laws and government) affects materially the manhood of all living in it. Good laws elevate man; bad laws, if persisted in for a series of years, will degrade any society. Unfortunately, history and the existing state of many countries prove this truth so abundantly that it is useless to instance any facts. Mr. O'Connell's speech, House of Commons, April 28, 1837, on the Irish Poor Law Bill, respecting crime and poverty in his native country as the effect of bad legislation, is worthy of all attention.

It is one of the greatest blessings to live under wise laws administered by an upright government and obeyed and carried out by good and stanch citizens; it is most grateful and animating to a generous heart, and a mind which cheerfully assists in the promotion of the general good, or salutary institutions. It greatly contributes to our self-esteem if we live in a community which we respect, among fellow-men we gladly acknowledge as fellow-citizens. Many of the noblest actions which now adorn the pages of history have originated from this source of inspiration. On the contrary, we feel ourselves humbled and dispirited, we find our own views contracted and our moral vigor relaxed, we feel deprived of that buoyancy without which no manly and resolute self-possession can exist, it wears off the edge of moral sensitiveness, when we see ourselves surrounded by men with loose political principles, by a society destitute of active public opinion, which neither cheers the honest nor frowns down immoral boldness; when we hear of bribed judges, perjured officers, suborned witnesses, of favor instead of law, and can perceive only listless spectators, without any opinion of their own, any spirit of veracity and trustworthiness or mutual dependence. Moral susceptibility gradually vanishes; the feeling becomes daily more blunted; for everything in society has a reciprocal effect. What is effect to-day becomes cause to-morrow. Hence the rapid downfall of empires when once corruption and depravity begin; evil begets evil; the succeeding generation is worse than the preceding one, until final dissolution follows, or a combination of happy and extraneous circumstances produces a sudden change, which, in the nature of things, cannot be frequently the case. Read the history of Rome for proofs of this. We see, therefore, the great importance of imprinting deeply on our mind sound principles of public morality; and when can this be done to greater advantage and with more certain consequences than in our youth? If Erasmus says, "At bonus princeps esse non potest, qui non idem sit vir bonus," his remark has equal force and truth if you substitute *civis* for *princeps*. (See his Instit. Principis Christiani, page 583, B, vol. iv. of his Opera Omnia, Leyden, 1703.)

If this knowledge has been of much importance wherever nations have attained to anything like wise and lasting institutions, it is peculiarly so in modern times. For one of the main and characteristic differences between ancient states—I mean the Greek and Roman—and modern ones is this, that in antiquity the state nearly absorbed the rights and interests of the individual, and public attention was directed far more towards the preservation of the whole than the protection of the individual. Politics, however, established according to the point of view which is taken in modern times, places the protection of the individual, the individual rights of man, in the most prominent position among all the objects of the state. This point will be more fully discussed in the next book. What has been said, however, suffices for the present, to indicate the peculiar importance which in modern times the individual, as such, occupies in the state, and the consequent necessity of a sound knowledge of everything that concerns him with regard to the relation he bears to the state.

XXXIX. As to the second question: Is politics susceptible of being treated in an ethical point of view? the answer is simply this: Either the state, and all the institutions and laws which have emanated from it, exist for the satisfaction of an ambitious and interested or privileged few, or the state is an institution for a distinct moral end, or politics is the effect of mere chance. One of the three must necessarily be the case. The first is so repugnant to every man's feeling, as well as to common sense, that none have ever dared publicly to acknowledge it, however they may have been inclined to act on some such view. If man is a rational being, the state must have a rational end, *i.e.* it must be founded in reason, which would not be the case were it a mere contrivance for the benefit, or rather the satisfaction of the desires and appetites, of a few. For science would then have to single out the few, and establish scientifically their claims. None can possibly be above reason. "Popes and kings, therefore, should seek a reason above their own wills." (Wiclif, in one of his sermons. See Webb le Bas, Life of Wiclif, New York, 1832, page 193.) And not only popes and kings should do so, but every man, the politician, leader, orator, general, president, or whatever his station, employment, or aim may be. "Res publica est res populi" (Cicero, de Rep., i. 25), and Augustin, de Civitate Dei, v. 18, enlarges it: "Res publica. id est res populi, res patriæ, res communis." Whatever is founded in reason cannot have an immoral end; it would be a contradiction in itself. A very great statesman, Oxenstierna, wrote, indeed, to his son, "Nescis, mi fili, quam parvula sapientia regitur mundus," when he encouraged his hesitating son to take charge of an important embassy; but, though this is unfortunately often the case, it is not necessary on this account that it should be so, either in the intercourse between nations or in municipal politics. Common sense has long decided the matter; for when has there, in modern times, a declaration of war been issued which did not endeavor, at least apparently, to seek for a just cause of war—one founded in reason? On the other hand, we hear nowhere more of virtue, and all the moral feelings of man more frequently appealed to, than in politics, even in those times when political notions are in the greatest confusion, nay, then perhaps most vehemently. Marat and Robespierre, Reubell and St.-Just, had the name of virtue always on their lips. Does this not show abundantly that all men are well agreed that the state, and consequently all politics, do not admit of immorality? Does any man ever appeal to our generosity and virtue when an entirely non-ethical act is to be performed, for instance, the building of a railroad? Exceptions, indeed, there exist, but they remain exceptions, and are rare. Thus, a most distinguished member of the French chamber of deputies pronounced, in the year 1831, from the tribune, that France ought to make war, for a new dynasty ought to surround itself with glory—which, to be sure, supposed that the war must needs end victoriously for France. Charles Gustavus of Sweden said, when he treacherously broke the peace of Roskild (concluded in 1658) because success had incited his thirst for farther aggrandizement, that after the conquest he would easily prove his right, and that there is always a just cause for war, as soon as there can be found a realm or prince who is incapable of resisting. (Raumer, History of Europe since the Fifteenth Century, vol. v. p. 387.)

XL. Still, it must be remembered, these are but exceptions. Look at the hypocrisy studiously carried through so long a life as that of Louis XI. of France. During all the protracted iniquitous transactions of the Castilian government against the Moriscos, the former will always be found desirous of glossing over its own actions with the appearance of justice. While Lerma persecuted these unhappy beings with studied cruelty in 1609, the king spoke of mild and tender means (*suaves y blandos;* in a letter of the king to the "Sworn" of Valencia, dated September 11, 1609, to be found in Raumer's Letters, etc., vol. i. p. 214).[1] When one of the blackest crimes that soil the pages of history, the massacre of St. Bartholomew, had been perpetrated with unexampled treachery, cruelty, and disgusting vice and villany by Catherine of Medici and Charles IX., on August 24, 1572, the king, after a long and cold-blooded consultation between his wicked mother and Anjou, as to the invention of the best means of justifying themselves (Tavannes, xxvii. 275), proceeded on August 26 to parliament, and there added to this stupendous wrong the solemn lie, after having heard high mass, that all had been done to save themselves from a vast yet timely-discovered conspiracy of the Huguenots. Their bodies were weltering in blood and could not gainsay the falsehood; but on August 24, the day of the carnage itself, the king and queen sent a declaration into all the provinces that the whole had been done against their will by the Guises. (Thuanus, l. ii. 9, 10.) Nay, though Philip II. of Spain celebrated this event by the performance of a drama representing the Triumph of the Church Militant, and Pope Gregory XIII. ordered a solemn Te Deum to be performed in the church of St. Louis, Charles IX. or his wily mother found it necessary to order, even two months after the bloody deed, the torturing and execution of an old nobleman, Briquemant, and of Cavannes, one of the royal councillors, as having been accessories, so that the appearance of truth as to a Huguenot conspiracy might be kept up. (Walsingham, iii. 228; L'Art de vérifier les Dates, ii. 191; Serres, 451.)

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[1] This act of treacherous crime, and, with regard to the physical welfare of Spain, of egregious folly, has been represented in its true light in Raumer's History of Modern Europe, already quoted in the text, where most of the sources of the history of this protracted act of cruel perfidy may be found. Mr. Capefigue, a French writer, considers, in his work entitled Richelieu, this act not so shameful nor so absurd; but his defence is a poor piece of special pleading. So was the massacre of St. Bartholomew called, in 1824, by the ultra-royalist papers, *une rigueur salutaire.*

The most striking instance of the pressing necessity of justifying public acts is perhaps offered by Louis XIV., who used to handle fraud like algebraic letters. He, who had a clerk of the department of foreign affairs hung for having betrayed state secrets, and at the same moment sent money to the privy secretary of the Spanish prime minister to buy his secrets,—he, whose minister De Lionne wrote to Chevalier de Gremonville, French ambassador at Vienna, "The king finds that you are the most impudent minister on earth; but in this piece his majesty bestows upon you the highest possible praise you can wish for;"[1]—this same king, who broke treaties while almost in the act of concluding them, who never hesitated at cruelty or falsehood if expedient, still was obliged to pay his tribute, in the cloak of hypocrisy, to political morality.

All the endeavors of this monarch in foreign politics were directed to this sole object, to place a branch of his house upon the throne of Spain, after the extinction of the Austrian-

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[1] Mignet, Négociations relatives à la Succession d'Espagne sous Louis XIV, précédées d'une introduction et accompagnées d'un texte historique, 2 vols. 8vo, Paris, 1836. Mr. Guizot, while minister, caused the abundant sources of the French archives to be used for historic publications. The title of the whole work is: Collection de Documens inédits sur l'Histoire de France, publiés par ordre du Roi et par les soins du Ministre de l'Instruction publique—of which valuable publication the above forms a part.

Spanish branch should have taken place. Neither time nor money, patience, cunning, treachery, deceit, and fraud, nor corruption of any kind, was spared. The road to this great object was opened as early as in the treaty of the Pyrenees, for even then all possible precautions were resorted to in order to nullify at the proper time all the renunciations which Maria Theresa, a Spanish infanta and wife to Louis XIV., had been obliged to make with regard to the Spanish succession at the time when her marriage-contract was formed. The French cabinet proceeded systematically to collect all sorts of pretences, to use them at the desired period.[1] Why did not the French cabinet quietly wait until the death of the Spanish monarch, and then strive to place a French prince on the Spanish throne by mere force of arms, without alleging one lawful reason? Because there is that mighty voice in every man's bosom which tells him that there is such a thing as right and wrong, and that, though it may be in our way, though the individual may have made up his mind to disregard this difference, he knows the world will not,—nay, more, that by openly proclaiming this disregard he would take away the only ground upon which a claim could be made; for a claim presupposes a right; a right presupposes the ethical ground upon which it must rest. Animals have no right towards each other, because non-ethical creatures; but we have rights and duties.

The Indians of South America appeared to the conquering Spaniards to be possessed of but very inferior claims when compared with their own. Not even the common laws of humanity were considered sacred towards the aborigines, and yet did the Spaniard feel the necessity of some justification before his own conscience; even his cruel conquest he wished to found upon some right, some moral basis. From the time of Alonzo de Ojeda a manifesto in Spanish was read to every newly-discovered tribe, in which, at great length, the rights of the pope, as vicegerent of God, were exhibited, how he had presented the Spanish crown with all the Americas, and how the Indians, therefore, owed allegiance to it, and a refusal of which would be visited by extirpation. The manifesto had been drawn up with great care by the united effort of divines and lawyers.[1]

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[1] See note on page 84.

Frederic the Great found it necessary to justify himself respecting the part he had taken in the unhallowed partition of Poland. When provinces or colonies rise against their mother-countries, they issue justificatory manifestoes; the sultan, some years ago, published an elaborate justification of the conduct of his government towards the Greeks. And it is to be remarked here again, that the more civilized the nations, the more they acknowledge the necessity of vindicating their acts on ethical grounds. The rude alone make their sword the tongue of the balance of justice, or bow without murmur to the stronger.

XLI. Men have felt at all times that the unchangeable principles of morality are not applicable to domestic and foreign politics precisely in the same manner as in private transactions or family relations. To demand letters not directed to us, in a way that is calculated to deceive the person who possesses them, in order to induce him to give them up, and then to publish those letters, would be considered, in ordinary cases, no very honorable act indeed. Yet who is there at present, American or Englishman, that would blame Dr. Hugh Williamson of Pennsylvania for the manner in which he obtained the dangerous and treacherous letters of Governor Hutchinson of Massachusetts Bay, from an officer in London, who supposed him to be an officer of the British government himself, judging from his positive demand, when the superior clerks were absent from the office? and who blames Dr. Franklin for publishing them?[2] Did the Gueux, in 1566, in the Netherlands, act wrong in stopping the messenger from the Spanish ambassador Alava at Paris, to Margaret, governant of the Low Countries, and in searching his despatches, by which they at length obtained incontrovertible evidence of King Philip II.'s sinister and revengeful plans? This amounts, however, to nothing more than that circumstances exercise always their influence upon the application of ethical principles. I never heard any one blame Columbus for making use of an eclipse, in the year 1502, to deceive the natives of Jamaica, in order to induce them by fear to continue to supply him and his crew with food, when that great man was shamelessly abandoned by the Spaniards in his colonies, who ought to have honored him most, wrecked in the saddest condition of health and with a mutinous crew.[1]

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[1] The document is to be found in the appendix to Washington Irving's Voyages and Discoveries of the Companions of Columbus.

[2] The manner in which Dr. Franklin obtained these important letters, which caused so much excitement at the time they were published, in 1772, and for

These instances, then, prove in no manner an absence of the moral element in politics. If such acts were not justifiable on other grounds than merely because they were political measures, they would not be justifiable at all. There was actually a time when, in Italy for instance towards the end of the middle ages, ethics was almost totally discarded from international intercourse, which in consequence became nothing more than the merest calculation of expediency. Such contemptible means as vanishing ink were resorted to in diplomatic affairs.[2] As to municipal politics, some men have boldly avowed that "all means are fair in politics," not in times of revolutionary disorder, but of profound peace and social prosperity; not in the ardor of debate, but in print; not at that age of Italian expediency when the holy host would

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which he was violently assailed, was a secret which he faithfully took with him to the grave. Dr. Williamson avowed the fact to James Read, of Philadelphia, who communicated it to Dr. Hosack, of New York. See his biographical memoir of H. Williamson, in vol. i. of Hosack's Essays on Various Subjects of Medical Science, New York, 1824. The great simplicity, boldness, and yet sagacity of the scheme add much to its interest.

[1] See Washington Irving's Life of Columbus.

[2] I have not mentioned in this place Macchiavelli, probably as some readers might expect; I take a very different view of this great man, which I have given in the article on him in the Encyclopædia Americana.

be used to convey poison to the lips of the communicant, but of late, in our times, in our country. Yet in a similar way have men asserted, and in printed works too, therefore well weighing what they said, that all means, the foulest not excepted, are fair for the promotion of religion.[1] If we may give up ethics in one thing, we may do so in all; the principle is the same; and Charles V. when he refused the offer made by the baker of Barbarossa to poison his master, though he was an outlawed pirate,[2] or Fox when he informed the great enemy of England that offers had been made to the British government to assassinate him, acted but as a poor politician. Not so, I trust.[3]

It is one of the chief objects of this work to show how the principles of ethics are applicable to politics. If there is at present in some countries so great a confusion of ethico-political ideas that the observer would well nigh lose his hope, let us not forget that nations may rise from a state of political torpor or immorality and assume a station worthier of the nature of man. Who would deny that England of to-day stands, as to politics and public political opinion, far above the times of Charles II. and the political corruption under James II.? Who would deny that France has politically improved, if we compare her as she is, with the times of the Regent and of Louis XV.? Who can deny that the probity of the papal church government has vastly improved since the times of the Reformation, if we compare it to what it was under the popes of the fifteenth century?

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[1] "Let the women who complain of the vices or ill humor of their husbands be instructed secretly to withdraw a sum of money, that by making an offering thereof to God they may expiate the crimes of their sinful helpmates and secure a pardon for them." Secreta Monita Societatis Jesu, ix. 16.

[2] Charles said, "I conquer my enemies with arms, not with fraud and treachery." Sandoval, Historia de la Vida y Hechos del Imperador Carlos V., ii. 243. Vera, Epitome de la Vida y Hechos del Emperador Carlos V., 71.

[3] * Boyer (Political State, 1719, vol. ii. 344) mentions that Paul Miller, a private trooper, offered to Secretary Craggs to assassinate the Pretender. Craggs informed the Lords Justices, who ordered his dismissal and procedure against him with the utmost severity. See Mahon's England, i. 523.

What minister of state would now dare to take a pension from a foreign monarch, or what judge a present or bribe? Yet nothing was more common, perhaps, all over Europe, in the seventeenth century.

Much, however, seems yet in an unsettled state. Very doubtful, and, at times, decidedly immoral, principles are publicly, sometimes unwittingly, proclaimed. Our task is to proceed in this branch as mankind proceeded with regard to ethics in general. Let us gather what is acknowledged as stable, let us ascertain why it is so, and on these principles rest our further conclusions.

CHAPTER VI.

Does Religion or Common Sense dispense with Ethics in Politics?—Hume's View of Common Sense.—What is Common Sense?—It does not dispense either with a proper Knowledge of Politics and Ethics, or with constant Exertion and much Industry.

XLII. POLITICAL Ethics has not appeared to many persons in as important a light as it otherwise would, had not false reliance been placed upon religion and common sense; both of which are as important in politics as in any other sphere of human action; but they do not dispense with morals in politics any more than anywhere else. As to the distinct sphere of religion, and the effects of confounding it, from whatever cause or motive, with politics or matters of right, and especially of taking the Bible, a code of religion and morals, for a political code, I must refer the reader to the sequel of the work. It is a subject which requires the calmest investigation. Respecting common sense as the sole guide in politics, the following is the view I take.

XLIII. Hume, in his Essays, vol. ii. p. 246, says, "Though an appeal to general opinion may justly, in the speculative sciences of metaphysics, natural philosophy, and astronomy, be esteemed unfair and inconclusive; yet in all questions with regard to morals, as well as criticism, there is really no other standard by which any controversy can ever be decided. And nothing is a clearer proof that a theory of this kind is erroneous than to find that it leads to paradoxes, which are repugnant to the common sentiments of mankind and to general practice and opinion." No one will deny that this is true in a great degree, yet it requires very much to be limited, or we should have in matters of taste as well as ethics the most unsettled standard. First, as to the words "mankind" and "general practice," they are vague. All mankind cannot be meant, for the diversity of opinion as to details is very great, both at different ages and at the same time. The African slave-trade, now declared by all Christian nations a piratical crime—Portugal, the first power who introduced it, abolished it last by a decree of December 10, 1836, and Texas sprang into existence almost with a declaration of its iniquity on her lips, which had but just pronounced her independence—was once a "general practice," and Roscoe, the pride of Liverpool, was hooted by that very community on his return from Parliament in 1807, for having voted for the abolition of that traffic (page 290, vol. ii. of Life of William Roscoe, Boston, 1833). Is then meant by mankind our peculiar race or tribe, or our nation, or our community, or whatever other representative of mankind be taken? If so, we shall find that in many cases what is a paradox with one nation is very far from being so with another. Respecting paradoxes themselves, we have only to remark that every great truth, when first promulgated, sounded paradoxical to the multitude. When the Eastern philosopher first called upon his followers to do good even unto enemies and to be like the sandal-tree which sheds perfume upon the axe that fells it, no doubt it appeared very odd, as we have the proof that Christ's precept to love our enemies was but a paradox according to the "general practice" and opinion of "mankind." There was a time when the idea that the people are after all the great and true fountain of power, or that they should have the right to criticise the acts of government, was nothing more than an odd paradox. It was decidedly repugnant to the general feeling of mankind in antiquity and the middle ages that the man "disgraced by labor" should in any way stand equal to those who did not labor. To gainsay it would have appeared as a mere paradox. When the French rules of taste prevailed, it was a sheer paradox to prize a glowing lyric or pathetic ballad of the middle ages more highly than cold and stately declamation expressed in formal alexandrines—nay, to value Shakspeare higher than Racine or Voltaire. There was a time when it was an absolute paradox to esteem the grandeur and slender gracefulness of Gothic edifices anything more than the architecture of a barbarous age. I do not make use of instances such as are afforded by witchcraft, or the ideas of free trade, and a thousand others, which sufficiently prove that we could not easily err more dangerously than by adopting the "common sentiments of mankind" as our sole guide, unless we have good reason for doing so. The instances which have been cited are taken from morals and criticism, the spheres for which Hume gives the rules. Yet, on the other hand, nothing can be more wayward, and even arrogant, than to set up private opinion, judgment, and feeling on all occasions, against general opinion or what has been sanctioned by successive generations. Proper limits are to be observed: the present chapter, as well as that on public opinion and the Political Hermeneutics, will, I hope, either show them or aid in drawing them with greater distinctness.

XLIV. For the present I have to do with common sense only. What is common sense? It appears to me that the word is used in different meanings, two of which appear as the most important. It either expresses a peculiar species of judgment, which I shall designate more accurately, or that which has been settled as right, proper, allowable, by the aggregate judgment of a community or successive generations. In the latter sense it must be taken when Guizot says, "it is good sense which gives to the words their common signification" (he might have said, "it is practical life which necessarily forms, shapes, extends, and contracts the meaning of words), "and good sense is the genius (spirit) of mankind."[1] In this case common sense is not without a close connection with public opinion.

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[1] The original is, "C'est le bon sens qui donne aux mots leur signification commune, et le bon sens est le génie de l'humanité." (Hist. gén. de la Civilisation en Europe, Lecture I.) Degerando, in his Comparative History of the Philosophical Systems, in French, calls, vol. i. p. 312, common sense: vulgar (he ought to have said *common*) reason indeed, yet practical.

The phrase common sense has come down to us from the ancient philosophers and those of the middle ages. *Intelligentia communis* expresses more what we now mean by common sense. *Sensus communis* was with the schoolmen the *communis radix et principium exteriorum sensuum.* (See St. Thomas, Summa Theologica, pars prima primæ partis, quest. lxxix.). With us, common sense—called in German *gesunder Menschenverstand*, *i.e.* literally, sound human understanding, in French, *bon sens*, *i.e.* good sense—means, I believe, if duly investigated, sound practical judgment (*i.e.* that sound judgment which guides us in acting), unaided by any art or systematic train of argumentation, but sharpened and cultivated by practical life. That it be sound involves its being unwarped by prejudice (be this individual, territorial, clannish, etc.), passion, fancy, fear, or anything else; but sound native sense alone is not common sense; it is only the foundation. Native sense must have been invigorated or practised by practical life, to become common sense. An Indian who has never lived among the whites might be possessed of much common sense among his red brethren, but it would be necessary for him to live among civilized people, and to learn how to apply his native sense to their practical life, before we could ascribe common sense to him.[1]

XLV. The term "common" is not used in this connection to indicate that common sense is of peculiarly common occurrence, but to express its relative position to the cultivated intellect, searching and comprehensive reflection, elevated reason, or expanded genius, as well as that its exercise is daily called for by the common occurrences of life. When common sense is well versed and practised, and judging for the given present case only, we call it tact. Tact is instinctive, practical judgment; and by instinctive I do not mean, in this case, a species of practical judgment implanted, ready-made, by nature, but that judgment which has been so well practised by experience as to operate in ordinary cases so rapidly that we are ourselves unconscious of the operation. From these remarks it will plainly appear that no man can dispense with a degree of common sense, not only as being requisite for the common concerns of life, but likewise for the application of any rules, whether scientific, religious, or æsthetic. The divine, without common sense, acts as injudiciously as the most learned lawyer, the most gifted poet, or the best-bred physician with a similar deficiency.

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[1] Archbishop Whately gives the following definition of common sense, in the preface to his Elements of Logic, and likewise in his Introductory Lectures on Political Economy: "Common sense is an exercise of the judgment, unaided by any art or system of rules." This definition seems to be deficient; for common sense cannot be an exercise, an action, it must be a faculty; and it would include genius,—which, in the case of a young general, finds vast and new resources, unaided by any system of rules,—as well as the humblest intellectual effort of an idiot.

The more we move in a sphere of action, such as politics eminently are, the more important strong common sense becomes. We want it always to *apply* our rules, to fix on the proper limits beyond which any rule transcends its own spirit, to select the proper means of action, and to discover the true wants. But indolence, arrogance, ignorance, and cunning alone pretend that common sense suffices for all the many intricate and momentous questions in politics, especially when, what is frequently the case, people mean by common sense little else than something given to man in a finished state, which requires no cultivation or practice, but decides intuitively always right, as the dog which searches for truffles stops where these plants are deep beneath the surface of the earth.

XLVI. There has always existed a class of flatterers who tell the unlettered that common sense is sufficient to penetrate the subjects which cannot be comprehended but by patient study and faithfully gathered experience. There are books the titles of which promise to teach the art of riding perfectly, or to speak French completely, in two hours. I have heard a professor of philosophy publicly assert that nothing but what could be made plain to the intellect of a child was worth anything in philosophy, and that the greatest truths of philosophy could be made thus plain. How or why I have never learned. Why not the same in all other far less abstract sciences? I have heard "the unsophisticated, uneducated minds of people who sit under their own vine and fig-tree," publicly flattered. Sophistry is very objectionable indeed; but cultivation of mind is not sophistry, and an uncultivated mind, I mean uncultivated by the times, the general civilization we live in, the life of the individual, etc., is a very rude thing. Look at the unsophisticated New Zealanders. The world was not made for the indolent; the active rule. We have to work faithfully, to learn honestly, and gather industriously, that we may learn to do right. We must not minister to one of the worst dispositions, by telling the idle that they have to learn nothing, that the cultivation of the mind is useless. This flattery, however, has nowhere been so much resorted to as in politics. Courtiers have told young monarchs that they are far above learning and studious application, and demagogues have told the people that common sense is sufficient for everything. Do we navigate by common sense, or by observations taken skilfully and regularly? Do we cultivate the ground by dint of common sense, or by all the experience of century upon century stored up in agriculture, and applied, not without common sense as a matter of course? There have always been prominent men without learning; but because Napoleon conquered Italy when twenty-seven years old, or Alexander, Asia, before his thirtieth year, is there no art of war, no science of tactics? And, above all, were their minds cultivated or not? Besides, we are often greatly mistaken respecting the time and industry bestowed by those who have excelled on their peculiar subject. At times this appeal becomes peculiarly dangerous, because all men are but too apt to consider that to be plainly pointed out, to be proved by common sense, which we see, nevertheless, much distorted by our peculiar state of feelings or prejudices. As to whether "plain common sense" be sufficient to grapple with law questions, see what I say on Interpretation in Political and Legal Hermeneutics.

XLVII. I cannot conclude this chapter without adding one more remark, which is not without its application in politics and law. It is a common and nevertheless capitally erroneous notion, that the uncultivated in any art or science are the best judges. A picture may be very poor indeed and yet be mistaken by children or animals for reality. It is an observation of frequent occurrence; and he who told first the well-known anecdote of Apelles, or repeats it, to prove how well the Greeks painted, because the birds flew at the painted grapes, shows that he knows little about the art. Nothing is easier than to make even wild beasts mistake coarse imitations for real animals. No uncultivated mind loves music which consists of anything more than loud and various sounds. Pure harmonious music not unfrequently pains the savage. Nature has no charm for the uncultivated, except perhaps by way of roving in the open air. But the starlight sky, the moon silvering the vast expanse of a rippled ocean, the richness of thick foliage interwoven with slender flowers, the grace of the blade and the strength of the oak, have no charm for the so-called natural man. The most picturesque scenes of England were considered no better than barren, unpleasant spots, even at the time of Lady Montagu. (See her Letters, late edition by Lord Wharncliffe.) So we are told that the truly great in the moral world will never fail to strike the uncultivated. It is radically wrong; only we must not confound cultivation of soul with school education, which may or may not be bad, or with the distortion of the mind—the effect of vitiated times. Life and times also educate. It is true that that which is essentially great, beautiful, good, strikes that in us which is essentially human, and therefore will strike generally, *i.e.* beyond the bounds of nations and ages, as the works of Praxiteles, or a noble deed or delicate trait related by Herodotus, will be appreciated forever; while that which pleases by way of fashion sinks and withers with the caprice or mistaken refinement which produced it. Yet it requires due cultivation to value it. This mistake is founded upon the still more general confusion of ideas by which rude and uncultivated minds are considered as being in a more natural state than cultivated ones. More of this in the next book.

It is very true that men fall in love with what has cost them much labor, and many abuses are perpetuated, simply because it has given those who ought to effect a reform much trouble and perseverance to bring their minds to submit to them. But this proves nothing against us. Many excellent law reforms have been started by non-professional men, because they saw more freely, judged more boldly, felt more deeply. In the second book I shall quote a remarkable passage of Lord Bacon's on this subject. Yet what they saw or felt or judged of they did not perceive intuitively. The nobler anything in creation, the more it requires cultivation, development; the lower the animal, the closer it is connected with the whole material world around it, the less it acts by volition. The noblest object in the scale of our terrestrial creation is the human mind, which, considering the degree of perfection which it may reach, starts less finished into existence than anything else. It may be compared to a few given points or positions in the highest analysis, from which a vast solution is to be derived. Again, the noblest, vastest, highest institution is the state, which for that very reason requires more cultivation and exertion of the highest and best powers than any other. History abundantly shows that it is the cultivated, not the pedantically learned, who are the leaders; the instinctive fear of ignorance makes it shun or yield obedience to cultivation. The belief that learning trammels the mind for practical purposes, and especially for politics, is very common; yet throw a glance at the list of the great counsellors of monarchs or nations, and select those who have served them best and most truly, they have been nearly all hard, honest students; look at such men as Michel l'Hospital, Sir Thomas More, or the friar Sarpi, whom Venice, the shrewdest of all republics, appointed adviser to the state. Nor shall you arrive at different results if you view the nations of the earth. Greece, which stands at their head, did not arrive at that proud historical eminence by mere instinctive genius; see how her great men labored and toiled, though no nation probably was at the same time more happily gifted; how earnestly her statesmen as well as artists studied. Think and act, and you will influence.

XLVIII. If we are desirous of doing our duty, we must know it; and we cannot know it without an accurate appreciation of the relations which may call for its exercise. In political ethics, therefore, it will be necessary, before all, to have a distinct idea of what the state essentially is. I have given my views of this greatest institution in the next book. I shall be obliged to treat in it many problems properly belonging to natural law; but the reader will find that this apparent deviation from the subject strictly before us was necessary. We cannot thoroughly discuss and investigate the duties of the citizen, for instance, when in the opposition, his obligation as to unwise, unjust, or depraving laws, his rightful conduct as an executive officer, in a word, all his ethical relations growing out of the state, without first inquiring into the essence of this institution; and as I cannot, without many reservations, subscribe to any extant political theory, I shall be obliged to give my own views, before I proceed to treat of political ethics proper.

BOOK II.

THE STATE.

CHAPTER I.

The Law is everywhere.—What is Law?—Sociality.—Origin of the Family.—Of Society.—Everything conspires to lead Men to Society.—Strong and natural Ties in Family Affection, Language, Division and Union of Labor.

I. If you leave your home to take an airing, you may walk in security on the side-walk of the street, because you know that no rider will disturb you. Who or what prevents the people on horseback from making use of that part of the public road? The law, or, if they were to disregard it, certain officers, that is, men invested with authority likewise by the law, who have been charged to enforce this among other laws. This law, then, protects you. You proceed farther, and find these words on the sign-board of a bridge, "Keep to the right, as the law directs," addressed to those who guide a vehicle. It is a law which commands something. You may pass an orchard with inviting fruits; the fence surrounding it might be easily scaled, and you feel an urgent impulse to slake your thirst with the juicy apples before you; yet you must not do it. Were you to follow the dictates of your desires, though most natural and perfectly innocent, the law would punish you, because it protects the orchard as the property of some one else. The law is made already, and thus it warns you. A decrepit and poor man is prevented by certain officers from asking those persons, who show by their dress that they live in ease, to give him from their superfluity that which he is unable to obtain by his own exertions; he is taken to a house designated by the law as a home for those persons who cannot earn their living. You sail on the vast ocean, at a great distance from all society; a man-of-war, perhaps belonging to a different nation, thousands of miles from your own, bids you to lie to and show your colors. An officer comes on board your vessel, asking for your papers, and requesting you to go with him on board his own. If you refuse to comply with his request you expose yourself to vexations, perhaps to danger. It is the law of your land, and that observed among nations, which obliges you to provide yourself with those papers and to produce them under these circumstances. In a foreign port a consul of your own nation advises and, if need be, protects you. The law directs him to do so. You see an individual depriving another of his life, violently and considerately; yet nobody attacks the one who kills, or rescues the other, doomed to die, because the law has decided that he should die in this manner—it is an execution. The law establishes schools and obliges parents to send their children to them. The law assists a poor man to obtain his dues from a rich one, and again it protects the rich so that the poor shall have no more than their due. A single individual says the harshest things of those in power, yet no one molests him, because the law has said that he may do so; and again, there are laws which all or nearly all dislike, or declare unprofitable, nay, even cruel, and yet they are obeyed unaided by physical force. The law has built highways, united rivers, severed mountains; it takes away property for the public benefit, and protects it; sends expeditions into remote regions, founds libraries and collections of works of art, adorns and beautifies; takes care that the merchant measures with a true yard-stick, and tells him in what money he must pay his debts; it condemns unwholesome food, prohibits your having more than one wife, punishes public immorality, interferes if your occupation disturbs or annoys others, obliges you at times to take up arms, at others prevents you from using them to avenge the most signal injustice, and at others, again, it permits you to use them. What, then, is this law, invisible, yet seen in its effects everywhere? Whence does its binding power flow, that we obey it, even though we disapprove of it, and though we are unactuated by fear; which interferes with my most natural appetites, may deprive me even of the simple right of locomotion and confine me in a lonely cell; gives, divides, and defends, or takes away, property; assures me that it will carry out my will and disposition, even after my death, and defeats my will though distinctly pronounced; protects my life, and yet may demand of me to expose it, or may take it under certain circumstances; prohibits me from avenging wrongs, interferes with my own disputes, tells me I must not do a thousand things, though I may have a strong desire to do them, or that I must do things to which I feel a decided aversion; in fine, which accompanies me wherever I may go, penetrates into all relations of men to men, to animals and things, and, what is most remarkable, is never intermitted or suspended, but continues to act and every day creates new rules and regulations for man's conduct and his various relations, and with unceasing and inexhaustible energy seizes upon every new condition of men or things that may spring up? What is this law, that is so closely connected with ourselves and everything relating to us that few things, indeed, are out of its reach, that it is carried along with every individual into all new relations, actions, and operations; which extends over men, animals, the fruits of the field, the game and trees of the forest, the rocks and minerals in the bowels of the earth; which is so inseparable from man that whatever he touches he brings under its domain, even the produce of the vast and distant sea, in fish, whale, seal, plants, shells, amber, and pearls, and appropriates what the fury of the winds had carried to the bottom of the ocean, ownerless as it may be, the moment it is brought to light, to human use again? What is this law?

Law is the direct or indirect, explicit or implied, real or supposed[1] expression of the will of human society, represented in the state, or, of a part of human society constituted into a state. And what is this state? Whence does this derive its all-pervading power, and, more especially, its right to this power? How did it originate? How far does its rightful power extend, or is it unlimited, and is there absolutely nothing beyond its reach?

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[1] *Direct or indirect, i.e.* by laws which emanate directly from the highest authority of the state, or from societies founded or permitted to exist by the state.

II. We have seen, in the first book, that morality necessarily implies individuality. No virtue, merit, fault, or crime, in the strict sense of the term, can be common stock among several individuals. There is no accountability without individuality. If three men jointly save the life of a fellow-man, at the imminent risk of their own, or murder him, that which is good or wicked in these joint actions belongs separately or individually to each of them. In the latter case, the death of the murdered man was the joint effect of the separate actions of three individuals; but the crime, the murder, that is, the criminality of the action, is each one's own, provided the aid of each in perpetrating the act was equally essential in bringing about the criminal act. Simple as this truth is, yet there have been people who reasoned in this manner: "Since but one murder was committed, and three persons jointly effected it, it appears that each one cannot have committed a murder, but only part of it," thus confounding the effect, that is, the extinction of the life of one human being, with the moral action, the murder. As if among the thugs in the East Indies, the shumseea, or "holder of hands," were not as much a murderer, and as guilty, as the bhurlote, or "strangler."

III. Besides man's individuality, we have now to notice his sociality, or the necessity imposed upon him to associate, both for the purpose of obtaining ends of the highest importance in the physical as well as intellectual and moral world.

Explicit or implied, *i.e.* by way of custom, which again may have been acknowledged distinctly or tacitly. (See on Obedience to the Laws).

IV. Of all animals, man is born not only in the most helpless state, but the infant requires the care of its mother long after it has ceased to derive its nourishment from her, which causes not only a physical but also an intellectual education. Hence the fact that the attachment between human parents and their offspring is far more enduring than between other animals. This education lasts so long, the child requires the care, protection, and guidance of its parents for so extensive a period, that they may have other children before the first is able to take care of itself. From this circumstance, and the continuity of conjugal attachment, which is not, as with animals, limited to certain seasons, originates the perpetuity of the conjugal union, as well as a mutual attachment among the children, while with other animals no connection, or a very limited one indeed, exists between the offspring of the various seasons. The protracted state of the child's dependency upon the parents produces habits of obedience, respect, and love, and, at a more advanced period, a consciousness of mutual dependence. The family, with its many mutual and lasting relations, increasing in intensity, is formed. The members of a family soon discover how much benefit they derive from reciprocal assistance, and from a division of occupation among them, since man is placed in the world without most of those strong and irresistible instincts which are given to other animals for protection or support, and which seem to increase in specific intensity the lower the animal stands in the scale of animate creation, thus approaching more and more the plant, which lives without any self-action—an absolute slave to season, clime, and soil.

So little is man instinctive, that even his sociality, so indispensable to his whole existence, has first to be developed. He is led to it indeed by the natural relations between the progenitors and their offspring, as we have seen; but he is not, strictly speaking, a gregarious animal.[1] Gregarious animals do now congregate as they have ever done; but man's sociality increases infinitely with every step he makes in the progress of civilization. His sociality is, on this account, not the less natural. We shall presently see the true meaning of this term applied to man.

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[1] See Cuvier's *Le Règne Animal*, article *Homme*, page 69 et. seq of vol. i., Paris edition of 1829. The work has been translated.

Man does neither act by instinctive impulses, so numerous and so strong regarding specific actions, as we find them with the brute, nor does he lay the foundations of the many institutions which become important in course of time, after mature reflection, as if he knew at the time to what momentous consequences they would lead. It is a common error, which has misled many of the greatest philosophers, to ascribe to the free action of ripe judgment and forecast what must be derived from quite a different source. Nearly all the mistaken notions of the origin of the state can be reduced to this fallacy. Mr. Say[1] says, the first men united into societies

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[1] *Tableau générale de l'Économie des Sociétés*, page 544, et seq., in Say's *Cours complet d'Économie politique pratique*, 3d edit., Brussels, 1836.

I may mention another mistake of Say's; his name stands in this case but for a large class of reasoners. On page 545 of the above work and edition, he says, the principal object of all human societies is to provide for their wants (by which physical wants are meant). How does he know that this is the chief object? Because, says he, we find this trait in all societies, rude or cultivated. As an instance how to proceed in order to find the essential point of any institution and to separate it from what may be accidental, he mentions, on a previous page, marriage, and argues thus: "We shall immediately see that it is the want of nature which induces man to unite with woman, to produce children, and to bring them up, in order to see himself replaced by them in the course of time. This is the *essential* in marriage, that which constitutes it." All the rest, as ceremonies, etc., he declares as accidental. Does man, desirous of marrying, really argue thus? Has he really, at that period, the continuation of mankind so much at heart? Is marriage with most men the effect of reflection? But we waive this, and shall only remark the grossly illogical process of argumentation. That which is common to all the species of a genus is therefore the essential point of them! All apples are round or nearly so, all horses have four feet, therefore roundness is the essential point of apples, and quadrupedity of horses. Procreation is not the characteristic of marriage, for if so then it belongs to all animals. It is, among other things, the permanency of this union of persons belonging to different sexes, and the exclusiveness (whether monogamic or polygamic), which makes the union a marriage; and its object is far higher than mere procreation, which, as we see from the animals, does not require a permanent union. It is to protect themselves and to assist each other in obtaining food. This is erroneous: doubtless they soon found out that they might protect and assist each other in hunting, fishing, tilling the ground; but they were already united when they found it out, or they would never, perhaps, have discovered it. How rare are the instances, and these few only at how advanced a period of human society, of a number of people congregating together purposely and after well-weighed deliberation! It is fallacious, I repeat, to ascribe our knowledge, experience, and views to former, and especially the earliest, ages. The ancients were well aware of the fact that men had not united into societies by the free consent of previously disunited individuals, but were kept together by their nature. They went, however, too far on the other side. Cicero says, bees do not congregate for the purpose of constructing a honeycomb, but, being by nature gregarious animals, combine their labors in making the comb; and man even still more is formed by nature for society, and subsequently as a member of society promotes the common good in conjunction with his fellow-creatures. Neither one nor the other is the case. It is true, indeed, that man is led to promote the final ends of society, to move towards them, long before he is fully aware of them; but he is not, as has been stated, instinctively gregarious, nor does he join society in consequence of reflection. He is led to do it by his nature, physical and intellectual, which gradually unfolds itself with every step of progress he makes. By the nature of man is understood something very different from instinct, as will appear from the sequel. But why did men unite or remain

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the family life, the development of all the fruitful relations within the family, and the protection of the female, and education of the young, which form some of the essential objects of marriage. The characteristics of marriage are the permanency and exclusiveness of union between individuals of different sexes; for the marriage is marriage though there be no issue. But Say fell into this mistake because he adopted the almost universal error of looking backward instead of forward, of looking to the savage man, yet ascribing to him views and foresight of more advanced periods—instead of considering the civilized man and the invariable fruits of civilization, when the problem is to discover man's true nature.

united? How did they come to congregate, long before they were aware or could be conscious of the many advantages derivable from association? Because they could not help it. Their nature, physical and moral, their constitution, their affections, kept them together, but did not originally lead them to it from a state of isolation. Separation is only a second step; total and protracted insulation, however, the unnatural state of some later periods.

V. The fact that men remained socially together, lived united in a family, caused them to make ample use of the organs of speech, so peculiar to man[1]—language developed itself, the most powerful of all ties. Experience, knowledge, acquired skill, could now be transmitted from one to another, from the older to the younger, traditionally from one generation to another. The same with regard to affections, to experience, enjoyments, dangers, sufferance, and supposed or really great actions. Language gave continuity to the family, tribe, or larger society as such; by language and its power of transmitting ideas, distant members of the same family were enabled to know that they belonged to the same stock, were people of the same extraction; family recollections, prejudices, and affections expanded into the common feelings of the tribe. Language became a new and potent agent, both in the development of man's character and the progress of civilization, however slow this must have been in the beginning, especially before the art of writing was invented; in uniting generations with generations, and in awakening in man the consciousness that he is essentially a member of a society, not only as to its present existence, but likewise as to its connection with previous and future generations, that he is indebted to the former, and that the latter will depend upon him. Man began to perceive that he is closely united with a permanent society, that his weal and woe are interwoven with it. As he has affection for the members of the same family, so he found them enlarged into affections for a wider society, he felt himself mingled with it, with its recollections, its history, and its future destiny; he loves his tribe, his nation, his country, until at last this feeling becomes a distinct and ardent devotedness to his country, becomes patriotism, and the philosopher pronounces, non nobis sed rei-publicæ nati sumus.

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[1] See Herder's Treatise upon the Origin of Language (a "crowned" prize Essay), translated from the German, London, 1837. I wish, however, not to be understood as agreeing with those scholars who ascribe the origin of language to this superiority of the organs alone. The noblest organ would not have produced language, had man not felt urged to express thoughts and feelings. See likewise the various works on the human voice, for instance that of Dr. Rush. [*I.e.*, language could not exist without high degrees of memory, forecast, imagination, abstraction, generalization, etc. Language is the voice of a highly endowed soul. A brute soul does not need it.]

VI. The various members of a family could not live together for any length of time without a certain degree of division of labor. No number of individuals can associate with one another, for whatever purpose this may be, not even children for the sake of playing, without dividing, in a degree, labor among them.[1] Indeed, the first division of labor must needs have begun between man and wife, brought and kept together originally by physical difference and social desires. Division of labor, and what is indispensably connected with it, union of labor or association of energy, leads naturally to, and, in fact, is of itself, exchange, bartering, so peculiar and characteristic of the human species, as we have seen in the first book. This forms another bond of society. The division of labor and consequent exchange lead, moreover, soon to the idea of property, the desire of retaining free mastership over that which we have acquired by our own industry, perseverance, courage, sagacity, or any other exertion of our mind or body, or by good fortune.

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[1] Men, ever so strange to one another, if brought together, *must* divide labor. All cannot row and steer at the same time. When a caravan halts after a day's journey, one of each mess will naturally attend to the camels, another will prepare the pillau, a third will unroll the mats. The inmates of each room in a hospital always form soon a little community founded on the division of labor. Everything conspires naturally to unite men; reflection, at a later period, finds out how salutary, what a blessing, sociality is.

CHAPTER II.

Property.—Mine and Thine.—Origin of Property.—Various Titles.—Individual Property is necessary for Man.—Does not arise from Man's Iniquity.—Man never lives or can live without Property.—Slow Development of Property.—International Acknowledgment.—Copyright.—Property with Agriculturists.—Civilization and Population depend upon it.

VII. The terms *mine* and *thine* signify a comparatively close or exclusive relation between a person and some thing or another person. That thing to which we apply the term in its most intense meaning, that is, expressive of perfect mastership over it, the right, the power of free disposal over it, is called the property of this person. Though there is an infinite gradation of all the various relations to which the words *mine* and *thine* are applied, yet they all have this in common, that a peculiar relation between the two things or beings is meant. We say, my country, my king, my son, my horse, my beauty (if we wish to designate one we admire particularly), my sunset, etc. Man did not at once distinguish very accurately between all these relations; peculiar closeness of relation, founded on whatever ground, was frequently considered as establishing that which we now call exclusively property. The father felt that his child was in a peculiarly close relation to him, both on account of his physical relation to himself, and also because he protected the son; the child, therefore, was long considered the property of the father. The close relation of the wife to the husband, her dependence upon him, made her to be considered the property of the husband. She was, and to this day with many tribes is, sold to him; even with nations with whom she has acquired a more independent position, she continues, by way of ancient marriage ceremony, to be sold to the wooer.

The ideas mine and thine must have originated with the first thoughts of man. As soon as there existed more than one family, more than one couple of parents with their respective children, the idea of this close relation must necessarily have been clear in the mind of men. The child is much more emphatically the parent's, than the wife is her husband's. She may cease to be his, the child cannot change its relation to its parents. Besides, conjugal relations are but loosely defined and acknowledged with most tribes, I believe, perhaps with all, in the early stages of society; and, on the other hand, the human mind has not yet succeeeded, as already alluded to, in drawing a distinct line between that relation to which the word *mine* is applicable on account of affection, duty, etc., and that to which the same term may be applied on account of absolute disposition over it. Most nations have started from the idea that the child is bona fide property of the father, to be sold or exposed and killed according to his pleasure. Esquimaux children were offered to Captain Back by their parents for a needle or a saw. Again, affection itself must soon have given birth to the idea of mine and thine. There is no heart so cold, no intellect so dull, which is not struck at once by the force of the term, or the feeling expressed by the words, " my child," " thy son." Animals have undoubtedly this feeling too, and, for a time, in a very strong degree. We see it by the readiness with which the parent sacrifices itself for its offspring; but the feeling vanishes soon, and the brute intellect is too confined to develop it in any high degree. Applied to things, to objects of the inanimate world, the idea must present itself at an equally early period. The father has to provide for his children; the absolute necessity establishes the absolute duty to do it. If he has broken off a branch of bananas for himself or his children, and some one else would take it from him, he would answer at once, in the most practical and most philosophical manner, "The bananas are mine, I plucked them." The title is proved in this case in the most forcible manner by that mode by which we prove, and conclusively, too, so many elementary positions — the exclusion of all the contraries, " To whom should this belong, if not to me?" Has he not exerted himself to obtain them? has he not, by his industry, established already a closer relation between them and himself, than any one else? The same is the case with his arrow, spear, the first animals he tamed, the first plants he saved, the first trap he made. They wear the imprint of his labor, they are identified with himself.[1] If the thing to be appropriated belonged to no one, to whom can it possibly belong, if not to him who took pains to obtain it? Man continues to establish thus his title to property every day. All unappropriated things, for instance, the fish in the ocean, become appropriated as soon as caught, that is, as soon as placed in an exclusive relation to some one. The whale is the property of no one until the harpoon of the hardy whaler has wounded it. From that moment it is his. Even the mere chasing would establish, though no legal title, yet a socially acknowledged one, and it would be considered very *unfair* among whalers if others were to interfere in the pursuit of this, considered already an appropriated whale. This right of property by assimilation or imprint of labor or industry, if not appropriated before, confers certainly a strong title, and it might be said that as all capital is accumulated labor, labor saved, we likewise establish our title to property in civilized societies if we buy it lawfully, that is, if we give accumulated labor for it. So strong is the title conferred by labor that men are ever unwilling to dislodge, without any consideration, settlers who have improved the soil though it did not belong to them, and on which they have, consequently, settled unlawfully. Many legislatures in the United States and other countries have afforded instances of this partial acknowledgment of a title under these circumstances.

VIII. There remain, however, various important questions yet to be answered, and many other titles to property yet to be examined.

Why, it has been asked, should man be allowed to appropriate more than is necessary for his support? We ask, what support is meant? The momentary satisfying of his hunger, by shooting a deer, plucking a fruit? Is he allowed to shoot several deer and dry the meat for the winter? Is he not allowed to cultivate a tree which shall give him fruit for certainty, so that he may not be exposed again to hunger, the pain of which he knows already? May he not cultivate a patch of land to have corn for his children? If he has slain a buck to satisfy his hunger, is he allowed to appropriate the skin to himself and call it his own? If the industrious fisherman sails to the banks of Newfoundland to appropriate to himself the unappropriated codfish, has he no right to catch as many as he thinks he and his children shall want for the whole year? But they cannot live upon codfish alone; may he not take so many codfish as to exchange part of them for other food, for clothing? Does supporting his family not include the sending of his children to school? May he not catch some more to save the money he may obtain for it, that, should he perish at sea, his wife and children may not suffer from want or become a burden to others? Where does the meaning of support stop? Why should it apply to the satisfying of physical wants only? There are wants far higher than these —the wants of civilization. We want accumulated property; without it, no ease; without ease, no leisure; without leisure, no earnest and persevering pursuit of knowledge, no high degree of national civilization.[1] Aristotle already lays it down as the basis of high civilization, to be free and have leisure. Still the question would remain, why have private property? It is the very same ease which is promised to us by those who recommend to us a system of common property.

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[1] See Locke on Civil Government, chap. v. 45, et seq.

IX. Each man is a being of himself, an individual; his individuality is all-important. He has a natural aversion to being absorbed in an undefined generality. From early childhood man feels an anxiety to be a distinct individual, to express it, and consequently to individualize everything around him. Man must ever represent in the outward world that which moves his inmost soul, the inmost agents of his mind. Property is nothing else than the application of man's individuality to external things, or the realization and manifestation of man's individuality in the material world. Man cannot be, never was, without property, without *mine* and *thine*. If he could, he would not be man. In all stages of civilization, at all ages of his life, we find him anxious to individualize things, to rescue them as it were from undefined generality—to appropriate. It is a desire most deeply implanted in man. Children will call a certain peach on the tree mine, another thine, without the least reference to its final consumption. The child is anxious to have a bed in the garden of his parent, merely to call it his own. When children look at flying birds, at passing clouds, they are apt to single out one or the other and call it mine, yours, etc. No complaint of the poet is more melancholy than that no heavy blade falls under his own sickle. Children in houses of refuge are most anxious to have a little box of their own, to have something in the wide world which they may call their own. The most abject galley-slave and the most powerful king strive equally to acquire some property, to have something they can call specifically their own. The former contrives to obtain a box or chest which may belong to him exclusively; the latter saves and buys property. And why should this anxiety have been so deeply implanted in the human breast? Because, as will be shown, private property is the most powerful agent in the promotion of civilization—an agent which has this striking peculiarity, that while it originates with man's individuality, it is at the same time the surest and firmest bond of society.

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[1] That by leisure I do not mean idleness, is clear. No harder working men than those who pursue sciences; but knowledge must sink, where every one has to work for his momentary and daily support.

Whatever is absolutely necessary for man's physical or intellectual existence, Providence has accompanied with pleasure. It is a pleasure to eat when hungry, to drink when thirsty, to sleep when tired, to awake after a long sleep, to love and care for one's children, to speak and commune with others after long solitude; the mere utterance delights the child. It is a pleasure to meditate, to analyze and combine; a pleasure of itself to produce, to work with effect; it is a pleasure to assist others, a pleasure to accumulate property—to individualize things and to place them in a closer relation to yourself. The first field you buy makes you feel happy, not because it will give you more or better fruit than you have enjoyed before, but because it is yours, just as the child is delighted to call a dog or bird its own. The human heart is delighted at finding its individuality reflected in the external world. The deep-rooted and noble love of independence is founded upon nothing else but the original anxiety of constituting a distinctly separate individual and being acknowledged as such. And as unrestrained pleasure in eating or drinking degenerates into gluttony or intemperance, so does the immoderate desire of appropriation degenerate into avarice. There was good reason for placing avarice as the second of the cardinal vices, because man has so strong a temptation to fall into it. All vices that beset us most are those which consist in a degenerate excess of the most natural and, therefore, most deeply implanted principles of our soul.

X. The process of the individualization of things, or effecting a relation between man and things, is various. It may be effected—

by production—if I make a boat, a book;
by appropriation—if I gather fruits, or take fish;
by occupancy—if I declare things mine and am able to maintain my declaration,
  a. by force (conquest, see further below);
  b. by law; and here, again,
    by pre-emption,
    by positive declaration of law, etc.;
by mixed production—if I tame animals, cultivate the ground;
by conveyance of the right of others—by grant, by sale;
etc., etc.

It is by no means said that these titles are absolute, or that they may not be regulated or interfered with by law. Many civilized societies prohibit too large an accumulation of property and too multiplied a division of real estate. Nor is it said that there is not somewhere a power which can change it. I do not mean to convey the idea that all sorts of titles are unimpeachable. If a country is really over-peopled, and if they cannot in any other way obtain additional land, although it may be unsettled, they are perfectly right in conquering it. Who would deny it? All I maintain is the principle that man must live with individual property. It is for natural and positive law to inquire fully into the nature of the various titles, and all their bearings upon society.

XI. The idea of property, that is, of a peculiar relation of man to things without him—a relation distinguished by a degree of exclusiveness and by peculiar reference to him, which involves the power over it, of disposing of it—grows out of the very nature of man, and, consequently, we find him at no stage without property. We do not, indeed, meet with landed property in all tribes; but the rudest islander of the Indian Archipelago, the lowest inhabitant of the Aleutian group, will call the fish-hook he made, the canoe he bartered for, the dress which he prepared of skins obtained by himself, his own, and consider every attempt to dispossess him of these articles as a gross outrage. Nor has there ever existed a society without property. We have seen trials made of establishing societies within which no individual property on a large scale was to be acknowledged, *e.g.* that of Mr. Owen in New Harmony, or that of the St.-Simonists in France. Some have succeeded in a degree, as Mr. Rapp at Harmony; so does the sect commonly called Shakers allow of no individual landed property, as many Catholic monastic communities do. But, first, their resignation of private property never extended much beyond what is generally called real estate; and, secondly, what more did the individual, in resigning, do than give up his property to the community he joins? They did by no means abandon all idea of property, nor could they. If St. Francis prohibits his order from holding property, he wishes them nevertheless to hold churches, convents, etc.; and if he enjoins them to beg for the daily support, he thereby acknowledges the right of property in the donors of the alms.

Suppose even that a whole nation could be induced to adopt the plan of Mr. Owen—and a most lamentable event it would be, because it would be reducing society to a chaos, out of which it needs must struggle to elevate itself, the very next moment after its reduction to it—would not that nation insist upon its joint property against the claims which another nation might set up? In a word, can we for a moment possibly imagine mankind without property? All that fanciful minds have dreamed of a supposed golden age extends no farther than to very confined limits. Bring yourself for a moment to imagine the idea of property erased from the human mind; what a state! Nothing but brute force to support each single individual—a pack of hungry wolves.

XII. It would not be much better were we to acknowledge the right of property in general, while we annihilated individual property within the limits of a state, nation, or whatever other society. The personality of man, the fact that every human being is, and of right ought to be, a moral being of himself, requires, generally speaking, private property. Men are not destined to become, after being united into a society, like a mass of liquid, every drop of which loses all character of individuality. Man is, and forever shall be, an individual. His goodness, his greatness, his activity, his energy and industry—everything good and characteristic of him as man is connected with the idea of individual property, if we include in this term, as we ought to do, the certainty of securing individually the benefit of individual exertion, of labor. Depriving man of individual property would amount to depriving him of half his humanity. Man strives, and laudably so, to see his individual industry, skill, and perseverance palpably, visibly, bodily represented in gathered property, this " nourisher of mankind, incentive of industry, and cement of human society." (Sir James Mackintosh's speech in the Commons on the Reform bill.) Property is intimately connected with the idea of the family as a separate body, and on this account, as well as on many others, with the whole province of civilization. Without a progressive advance of industry there is no civilization, though industry alone does not constitute civilization; and man's great destiny is civilization.

XIII. That primary agent within man which we may call the desire of action, of which I shall speak more fully by-and-by, when treating of power, impels him likewise to obtain property, as on the other hand, as we have seen already, property gives impulse to this activity. Whatever point of view we may take, we find that individual property is natural to man, connected with the inmost principles of his soul, and necessary for him as a social being. It is not to be ascribed, therefore, solely and originally to covetousness. Covetousness is a vitiated excess of an agent or principle originally good or innocent. The desire of property springs so directly from the nature of the human soul that it is universal, and, it being universal, its vitiated state is also of frequent occurrence. We see the same with respect to incontinency. The fact that covetousness is a widely-diffused vice, has induced many people, however, to consider property altogether as having its origin in a vicious disposition of man. This view, together with the erroneous conception of a state of nature, in which man has been supposed to have lived before a division of property had been *made* (instead of considering property as having grown inseparably with man), of the principle of mutual love, taught by Christianity, and the community of property, which in a considerable degree may have existed among the first Christians as long as they remained a small sect and an oppressed church, induced the early doctors of the church to consider the division of property, though not any longer iniquitous, yet as having arisen from the sin of man, and as being now necessary only in consequence of sin's continuance. St. Ambrose, in chap. xii. Luc., St. Chrysostom, Hom. I in Cor., St. Basil, Serm., all declare that no one should say, this is mine, this is thine, because everything is common (meaning of course among Christians). St. Thomas Aquinas says, Divisio bonorum non est iniqua, sed iniquitatis occasione et ad iniquitatem avertendam sit facta." The assumption of a division of property, as having taken place at some definite time, does not belong to the early Christians alone. The ancient Greek and Roman philosophers speak of it; nor can we be surprised at this view. It is a common error to ascribe general phenomena, presenting themselves to the eye of the observer as a definite thing, to an origin as definite, to specific general actions and agreements of society, instead of searching for their origin in the gradual but steady and natural operation of principles founded within us, or conditions which are the necessary effects of the relation of our nature to external and given circumstances. The origin of languages, of governments, of religions, has likewise been ascribed to arbitrary, sometimes fraudulent, agreements or inventions of individuals.

The fallacy in the case before us is great. It was first assumed that property was at some period or other divided. If so, it is clear that those who had the right to divide must collectively have had possession of the whole—a state of things which was considered to be much purer. An erroneous interpretation of a passage in the Bible (Gen. i. 28), by which man is declared to be ruler over all the earth, contributed to confirm this mistaken view. Things which are not owned by any individual do not on that account belong to all.[1] What meaning would the word property have, if applied to things which are out of the reach of man and have forever remained so? Have the millions of birds on the islands in the Pacific, which have lived and died unseen by human eye, been the property of any one individual or society? The passage in the Bible means that man shall be the ruler, shall, wherever he goes, subject the creature beneath him and make it his own; it means his inherent right to obtain, acquire, produce, individual property, and the superiority of his mind which will aid him in doing so. The uncaught fish in the ocean does not belong to all; it belongs to no one. Else it could not possibly become the property of him who catches it, at the moment he does so. Besides, the argument would apply to existing things only; how is it with those which man produces? We have a poem entitled the Division of the Earth, but I have seen nowhere such an event recorded in history. "To suppose a state of man prior to the existence of any notions of separate property, when all things were common, and when men, throughout the world, lived without law or government, in innocence and simplicity, is a mere dream of the imagination." (Kent's Comment., part v. lect. xxxiv.) Modern writers have generally followed this idea of original common property, confounding non-appropriation with common property, with more or less acuteness, from Hugo Grotius and Puffendorf down to Blackstone, who but follows the two first-named writers. Chancellor Kent, in the lecture just quoted, elevates himself to a far higher view; I therefore recommend in particular its perusal.[1]

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[1] * Why did men never declare the stars common property? They are things, too, not owned by any one. Because all know that we cannot exercise control over them. The same with the birds on the islets of the Pacific. They were born and died unseen, unknown, uncontrolled, and were as little common property as the stars But does a thing become common property only the moment that an individual seizes upon it, that is, at the moment when it ceases to be common property? This is absurd.

XIV. If I say that individual property is natural to man, I do not wish to express the idea that I am opposed to all combinations of property. On the contrary, I do believe that institutions in which persons of very limited property, deprived of family connections and advanced in life, should join their scanty means, in order to secure greater comfort, and perhaps even a more proper sphere of activity might prove highly advantageous.

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[1] Justin., lib. xliii.; Hugo Grotius, De Jure Belli ac Pacis, lib. ii. cap. iii.; Puffendorf, Droit de la Nature, ed. Barbeyrac, liv. iv., c. iii. iv., v., et seq.; Blackstone, ii., p. 1, et seq.—Hugo Grotius, always to be read with advantage, is no less so in the above book, and I advise the student to reflect well on it, though I differ from that great writer on the original principle.

On the other hand, it might be urged that, if property is natural to man, that is, consentaneous to the principles of his soul, how is it that robbery and piracy are considered an honorable trade with nearly all, perhaps with all, early nations, and if not absolutely honorable, still an occupation at which the general feeling of society does not seem to revolt? When Telemachus visited Nestor, to obtain some information respecting his father, his aged host, after having refreshed his guest and prayed with him, says, "And now it may be meet to inquire and ask who the strangers are, after they have refreshed themselves. Strangers, who are you? From whence do you navigate the watery way? Is it for settled purpose, or do you roam at hazard, like robbers over the sea, who wander wagering their own lives, bearing evil to others?" (Odyssey, iii. 70, et seq.) Homer does not represent those who were asked as spurning this question; those who asked did not mean to offend.[1] So we have only to look at the mid-

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[1] The following passage from Thucydides, at the beginning of his first book, is interesting respecting the above subject:

"The Hellenes formerly, as well as those barbarians who lived upon the coast of the continent or occupied the islands, when they had better learned how to pass to and fro in their vessels, took up the business of piracy under the command of persons of the greatest ability among them, for the sake of enriching such adventurers and supporting their poor. They landed and plundered by surprise unfortified places and scattered villages, and from hence they principally gained a subsistence. This was by no means at that time an employment of reproach, but rather brought them somewhat of reputation. Some people of the continent are even to this day a proof of this, who still attribute honor to such exploits if handsomely performed; so also are the ancient poets, in whom those that sail along the coasts are everywhere equally accosted with this question, whether they are pirates; as if neither they to whom the question was put would disown their employment, nor they who are desirous to be informed would reproach them with it. The people of the continent also used to exercise robberies upon one another, and to this very day many people of Hellas are supported by the same practices: for instance, the Ozolian Locrians, and Ætolians, and Acarnanians, and their neighbors on the continent; and the custom of wearing their weapons, dle ages, to find the trade of piracy and land-robbery held in honor for centuries. But I have not said that, because the idea of property is natural to man, it represents itself at once perfect to his mind in all its bearing; on the contrary, we shall see farther below that man, a rational being and destined for progressive civilization, has to develop every institution which is natural to him. Was not the holding of robbery in honor a distorted view which people took of the means of acquiring property, as if boldness, danger, adventure, were fit employment for freemen, but toiling for it fit for bondmen only, rather than a denial of property? They differed from us respecting the means, not the matter itself; for had they not had the idea of property, or felt the impetus of acquiring it, why should they have incurred dangers to do so? They believed power or courage sufficient to establish a title, not that everything belonged promiscuously to every one.

XV. The subject which occupies our present attention requires that I should anticipate a few remarks on a point which will presently engage us more fully, and to which I have had occasion to allude several times. The right of property has been but gradually recognized; each step in the way of civilization has obliged men to acknowledge it in one more of its many ramifications and peculiar forms. Still, I do not say, "*yet* property is natural," but "*therefore* property is natural to man." Everything that characterizes man as man appears clearer and more distinct with each advancing stage of civilization, the true aim, not the artificial end, of human society. We must lay it down as a rule, that whatever is truly natural to man, that is, essential to and characteristic of him, unfolds itself more perspicuously with the progress of civilization, and whatever shows itself in a steady gradation more perspicuously with the progress of civilization, is truly

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introduced by this old life of rapine, is still retained among them." So far Thucydides. Piracy was considered peculiarly honorable by many tribes around the Baltic or on the Northern Ocean in the middle ages, for instance, by the Northmen natural to man. The leaf is not less natural to the tree than the root, though it only shows itself under the influence of vernal sunshine. Much confusion has arisen from mistaking man's savage or rude state for his natural state, in consequence of which man's civilized state necessarily appeared as an artificial one, owing to the looseness with which the word nature has been used, applying it in different meanings to plants, animals, etc., or to the character essential to them, or, again, to man differing by his reason from them. The next erroneous step was that, since the civilized state of man was considered an artificial one, all rights which were gradually unfolded as it were by civilization appeared to be *made* and not *acknowledged* by society. We have a striking instance in the right of property. In some limited form it was acknowledged at an early period. Gradually it became more clearly defined, more distinctly recognized in the various spheres of human activity and enterprise, spheres to which man could elevate himself only by civilization. The law of individual inheritance has developed itself but very slowly with all nations, as the legal history of every civilized nation shows—for instance, that of the Romans or Teutonic tribes. Yet we find it with every civilized nation; and are we not bound on this account alone, even if there were not other powerful reasons, to acknowledge it as natural to man? If it is artificial, invented, then who invented it? Who had or has the gigantic power to force all mankind into a course contrary to nature? What is there in existence that can long and continually remain in a state against its nature?

We are surprised at the undefined state of property in those early stages of society, when piracy is considered a noble employment, fit to be extolled by bards, but we must not forget that there are rights of property to this day unacknowledged, which future generations will consider as sacred as we do those acknowledged centuries ago. Because there was no copyright in early times—because there were no books, or books did not yield any profit to make copyright worth anything—it is believed by many to this day that copy-right is an invented thing, and held as a grant bestowed by the mere grace and pleasure of society; while, on the contrary, the right of property in a book seems to be clearer and more easily to be deduced from absolute principle than any other. It is the title of actual production and of preoccupancy. If a canoe is mine because I made it, shall not that be mine which I actually created—a composition? It has been asserted that the author owes his ideas to society, therefore he has no particular right in them. Does the agriculturist not owe his ideas to society, present and past? Could he get a price for his produce except by society? But a work of compilation, it is objected, is not creation or invention. In the form in which it is presented, it is invention. The ideas thus connected, though they are, separately, common stock, like the wild pigeons flying over my farm, are the compiler's, are preoccupied by him, and belong to him in their present order and arrangement. The chief difficulty has arisen from the fact that ideas thus treated, thrown into a book, had for a long time no moneyed value to be expressed numerically, and that copyright has therefore not the strength of antiquity on its side. Yet observe how matters still stand with regard to this right. Prussia has passed, only last year (1837), an extensive and well-grounded copyright law.[1] In most countries, theatres may make whatever money they can by the performance of a play, without permission of the *inventor;* that is, they may use my boat to earn as much ferry-toll as they can. In the United States and in England, any man may make an abridgment of the work of another; that is, any man has a right to cut the ears of my corn, provided he leaves the stalks untouched—to drink my wine, provided he leaves me the casks.[1] Those nations who speak the same language, as the English and Americans, French and Belgians, and several of the German States (with the exception of Prussia and probably some others), have not yet international copyright, though they acknowledge other property of each other's citizens. It strikes every one, nowadays, as very barbarous, that in former times commodities belonging to any foreign nation were considered as good prize, yet we allow robbing in the shape of reprint, to the manifest injury of the author. The flour raised in Pennsylvania has full value in Europe, and is acknowledged as private property, but the composition of a book, the production of which has cost far more pains, is not considered as private property. A regular piratical trade is carried on in Austria, and by Austria with other countries, in books published in other parts of Germany. It was an ill-chosen expression in the British acts relating to copyright, that they were passed for "the further encouragement of learning." The legislature had, in this case, nothing to do with that subject, and Sergeant Talfourd, in bringing his new bill into the house, justly said that it was for "the further justice to learning." I do not mean to say that perpetual copyright is absolutely necessary according to natural justice. The sovereign action of society can regulate the tenure of this species of property as well as any other; though the same learned gentleman states that "perpetual copyright was never disputed until literature had received a fatal present in the first act of parliament on the subject, passed in 1709."[2] It seems very clear to me that the shortest term for which copyright ought to be secured by law is the life of the author and his next heirs, if both are not less than sixty years, the average time of two generations; but I strongly incline to believe that a century would be a proper term, and for the benefit both of the community and the author, if perpetual copyright be not adopted, which may offer objections, not to be discussed here.[1]

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[1] By this law of June 11, 1837, authors of works of literature, the sciences and arts, are secured an exclusive privilege of publishing, multiplying, and copying them during the term of their lives, and the same privilege is extended to their representatives for a period of thirty years from the day of their deaths. The whole law, altogether well digested, is applicable to works published in a foreign state—in whatever language—in so far as the rights established in that state are conferred equally by the laws of the said state to works published in Prussia.

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[1] Soon after Mr. Washington Irving had issued his Life of Columbus, his publisher was obliged to give notice that the author, being informed that some unauthorized person intended to publish an abridgment, had himself engaged in making one.

[2] Speech of Sergeant Talfourd in the Commons, May 18, 1837—able as everything that comes from that distinguished poet and lawyer.

XVI. Though men, when as yet but hunters, fishermen, or nomads, cannot live without some property, the first great step takes place when man passes from the hunting or roaming life to that of agriculture. So long as there is no individual property among the agriculturists, so long is the ground but poorly tilled. Witness some Indian tribes. And so soon as there is a real desire to till the ground, so soon does man revolt at the idea of laboring for the indolent. If he were forced to do it, degradation would be the necessary consequence. Who would be on a par with the inert and inefficient? Idleness, with its concomitants, vice and crime, must follow. Mr. O'Connell, in his speech already referred to, singles out the legal incapacity of holding property as one of the two main causes of crime in Ireland.[2] Let us not be told that we see the contrary in those societies already mentioned, the Shakers and that founded by Mr. Rapp. They live as a community contradistinguished from all who surround them, and enjoy the benefit of the general civilization brought about by the division of property in their whole nation. So may a family live very peaceably without ever calling in the protection of the law, or ever hearing of it, but that they can live so quietly, and do live so amicably, is nevertheless the effect of law and justice. Without property, society would never have risen so high that those communities now may live so peaceably and have so civilized intercourse with one another.

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[1] The right of international copyright is considered by some with a view to profit only, that is, as it strikes me, in a piratical point of view. As it is well to see the arguments on both sides, I would refer the student to a publication of Mr. Nicklin, of Philadelphia, against the proposed international copyright between the United States and England. [Since the author wrote, international copyright has been greatly extended in Europe.]

[2] On April 28, 1837, in the British Commons, on the Irish Poor-Law Bill. He said, "I need not go far back. It is unnecessary for me to go farther back than the last century and a half; and, looking at that, no one can be surprised to find Ireland in the state that she is in. I allude merely to two heads of those which are called the penal laws. By two distinct branches of those laws, ignorance was enforced by act of Parliament and poverty was enacted. Such were the effects of the penal laws. It was enacted that no Roman Catholic should teach or have a school in Ireland. Such instruction of youth was prohibited. No Roman Catholic could be an usher in a Protestant school; it was an offence punishable by confinement until banishment. To teach a Catholic child was a felony punishable by death. The Catholics were prohibited from being educated. For any child receiving instruction, there was a penalty of £10 a day, and when the penalty was two or three times incurred, then the parties were subjected to a *præmunire*—the forfeiture of goods and chattels. To send a child out of Ireland to be educated was a similar offence; to send it subsistence from Ireland was subjected to the same forfeiture; and, what was still more violent and unjust, even the child incurred

Property now assumes a more striking and a more elevated character. The progress of civilization is intimately connected with the division of the soil and hereditary property, as with agricultural pursuits altogether. For the other branches of industry cannot be cultivated if men have not previously become tillers of the soil. Civilization, moreover, requires increased population, and the former likewise promotes the latter; but the human species cannot multiply to any great extent unless supported by agriculture.[1] Property, again,

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a forfeiture. By these laws there was encouragement given to ignorance, and a prohibition imposed upon knowledge. I am not now to be told that these laws were part of ancient history: they were in full force when I was born. Another part of this code of laws prohibited the acquisition of property. No Roman Catholic could acquire property. He might, indeed, acquire it; but if he did so, any Protestant had a right to come into a court of equity and say, 'Such a man has, I know, purchased an estate—such a man is a Roman Catholic; give me his estate;' and it would be given to him. To take a lease beyond thirty-one years was prohibited; and even if within thirty-one years, and the tenant by his industry made the land one-third in value above the rent he paid for it, it could be transferred to a Protestant. These were laws that were in force for a full century. For a full century we had laws requiring the people to be ignorant and punishing them for being industrious—laws that declared the acquisition of property criminal, and subjected it to forfeiture. For one century ignorance and poverty were enacted by law as only fit for the Irish people. The consequences of a system of that kind are still felt."—The speech contains some very interesting agricultural statistics comparing Ireland and England.

[1] Cuvier, Règne Animal, vol. i. p. 78, Paris edit., 1827. The ancients were well acquainted with the fact that the human species does but slowly increase while in a state of barbarism. "As it seems to me," says Herodotus, i. 58, "the

must be protected against intruders as well as invaders; this, too, leads men to resort to mutual support, to live socially united. I speak now of a state of mankind when they have so far increased in number that the mere family tie is not any longer sufficiently powerful to make the individuals consider themselves as members of one family, when the various families have become estranged from each other, owing to the extensive number as well as the distance at which they must necessarily live from one another. Security of property, which includes individual property, is the mainspring of cultivation, as, among others, Mr. Henry Carey has abundantly proved in his Political Economy. The Hon. Mountstuart Elphinstone gives, on the other hand, on page 334 of his Account of the Kingdom of Caubul, London, 1815, the description of a peculiar tenure of land, by which it is distributed among various tribes every ten years by lot—an insecurity leading of course to neglect of culture.[1]

Pelasgic tribe has never become numerous, because it was in a state of barbarism." The history of all barbarous nations proves the same.

[1] * For some remarks on the fact that with property in soil the idea of private property, and, consequently, of the necessity of protecting it, first presents itself distinctly, and that states can become then only stable and the true foundations of progressive civilization, see section lxxxix. of this book. All uncivilized tribes furnish us with examples. They are not, indeed, without property, since man cannot be without it, but the idea is loosely defined; property does not yet furnish a solid substratum for social development. The Rev. Mr. Yate, in his Account of New Zealand, 2d ed., London, 1835, speaking, on page 32, of the desire of the New Zealanders to obtain money, instead of blankets and other commodities, says, "If they possessed any property (meaning personal), and it were known to any one else, they would be bound in honor to distribute it amongst their friends and adherents, or be liable, on the first cause of offence, to be dispossessed of all." We may observe the same respecting many chiefs in the middle ages.

Mr. Yate also says that the New Zealanders like money because they can hide it, carry it about their person—just like the Turks.

CHAPTER III.

Civilization.—What does it consist of?—Requires Society.—It develops Man, is his truly Natural State.—Futile dreams of Innocence and Virtue without Civilization.—Shepherds are savage.—Destiny of Woman.—High Importance and Sacred Character of the Family.—Virtues developed by it.—The true Nursery of Patriotism.

XVII. Men thus led to keep together in families, and induced by every farther progress of their species to live in society, discover that its importance rises the more civilized they become, and, as has been stated, man's destiny is civilization. If we define the latter as the cultivation, development, and expansion of all our powers and endowments, with reference, both as effect and as cause, to the social state of man, no one will deny, I suppose, the position.[1] Man was either made to be stationary or for civilization; a medium is not imaginable. If he was made to remain stationary, we ought to know in what stage. That of the lowest barbarism?

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[1] Lieber's Remarks on the Relation between Education and Crime, printed by the Philadelphia Prison Society, Philadelphia, 1835, page 4 et seq. Whatever definition we may give of civilization, my remarks will apply. We may say, the civilization of a nation is its aggregate manifestation of mind as ruling over matter. We call a nation more or less civilized according to the variety and the greater or less, deeper or more superficial extent of this manifestation: to be brief, that nation, I believe, will be called most civilized among which the greatest number of ideas are most widely diffused. A nation which has very distinct and widely diffused ideas of a proper administration of justice or of technical skill will be called more civilized than one which is wanting in these ideas, and less so than one which adds to this stock all the ideas of refined taste, in the fine arts, literature, social intercourse, etc. I recommend the perusal of the first lecture of Mr. Guizot's History of European Civilization, respecting the meaning of the word civilization. Deserving of attention are the remarks of William Humboldt on Civilization, Culture, and that which, higher than both, is designated by the German word Bildung, page 37 of Introduction to the Kawi Language, etc., already quoted.

If not, then he must be intended for movement; and where is this movement to stop? What direction is it to take? Certainly that of melioration.

By civilization man develops his moral, intellectual, and physical powers, and by civilization man becomes more and more master over matter. But civilization cannot be conceived of without society, by which I do not mean large congregated masses only, but men closely united by a variety of important relations and strongly affecting each other's welfare. He was great "qui dissipatos homines congregavit et ad societatem vitæ convocavit." (Cic., Tusc., 1, 25.) Without society, no fellow-feeling, no kindness[1] and sympathy; without society, no public opinion, no shame, no virtue, no religion; without society, no impulse for industry, no mental development, no intellectual progress from generation to generation, no common stock of science, no common stock of moral experience, no literature, no taste, no music, no fine arts, no exalted love of the beautiful, no deep reflection, no refinement; without society, no expanded idea of justice and mutual respect of rights, property, and independence, no public spirit and all that is connected with this elevating quality; without society, no true family life, the source of so much that is pure, kindly, and great; without society, no great degree of individual or territorial division of labor, no extensive exchange of produce, of customs and ideas, no calming and enlarging commerce;[1] without society, no polish of manners, no urbanity of intercourse, no saving of time, no increase of productiveness, no union of labor, of capital, of mind and various means, no works to benefit the many, no roads, no canals, no insurance against the elements, no schools, no protection, no cultivation to its greatest extent, no multiplied and animating enjoyments, no raising of the standard of comfort; without society, no great increase of numbers; without society, no humanity in man.

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[1] Man may live in solitude, yet aid effectually in the progress of mankind and feel the liveliest sympathy for its welfare. Few more active citizens have ever lived than Fra Paolo Sarpi, already mentioned, in his solitary cell, but though in a cell he still lived in society, because closely connected with it by his books, the active interest he took in the mighty changes of his time, in science, religion, and politics, and by his intercourse with the first men of his state. So does solitude exercise a most powerful effect upon the reflecting mind, both morally and intellectually, an effect of its own, not to be supplanted by anything else; nor can we prepare ourselves better for any great event, in which we know that we shall have to act an important part, than by retiring for a time into solitude. The ancient philosophers, the prophets, Christ himself, give the example; nor will any one who has ever tried absolute solitude deny its powerful, salutary, and lasting effect. This proves, however, nothing against my position. Man, in these cases, takes the amount of civilization gained by society with him, and remains united with it by all the ties of intellect.

Civilization develops man, and if he is, according to his whole character and destiny, made for development, civilization is his truly natural state, because adapted to and effected by his nature. "Naturaliter ergo homo est animal sociabile." (Ægidius de Regimine Principum, Venice, 1497, ii. 1, c. 1.)

XVIII. Civilization develops man's physical powers in various ways. We find, indeed, that the senses of savages are peculiarly acute as to some objects, but infinitely more developed are the senses of civilized man by mechanical trades and other occupations, the fine arts, and in many other ways peculiar to civilization. A savage may excel him in one way; in how many, however, does he not excel the former! Civilized man can undergo far greater fatigues, both purely physical and of a mixed character. The North American Indian can journey longer with his heavy burden across the portages than a white man; but how would he stand the fatigues of a campaign in Egypt or Russia? how would he endure a climate so unaccustomed to him as the parching rays of the tropic regions or the ice of the pole were to the Humboldts, Parrys, Caillés, Rosses, Backs, Clappertons? The muscular strength of civilized man has been ascertained to be greater than that of uncivilized man, as shown by the dynamometer, an instrument with a graduated scale for measuring muscular force. The sailors of a British ship were able to carry the index some degrees farther than any of the various tribes of the South Sea islands upon whom it was tried. Lastly, it is with advancing civilization that longevity invariably increases, as all bills of mortality abundantly prove.

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[1] Free nations esteem commerce as a public benefit. The English, the Venetians, the Americans, the Greeks, are instances. The *ἐμπορία* or commerce on a large scale was highly valued by the Greek, though he undervalued the *κάπηλος* or shopkeeper. We have to imagine the Greek not only as the artist, poet, scholar, politician, enthusiastic lover of liberty, but also as the active, shrewd, and persevering merchant of antiquity. See Heeren's different works on the ancient nations.

XIX. The toils and woes of the human species incident to the frailty of their bodies, ill-guided and jarring appetites, and misconceived interests, led men at a very early time to imagine a period when plenty rendered labor unnecessary, and universal content prevented contest and clashing of private interests. Poets dwell with satisfaction upon this agreeable dream, which gave, at least to the fancy, that for which the heart yearned, and to which reality offered so decided a contrast. The more degenerate the times, the more trouble and misery and vice there was in the world, the more vividly was this state of pristine happiness depicted; and a Juvenal, before he lashes the depravity of the women at his time, first paints the golden age (Satire VI.). It was forgotten, or not distinctly seen, that man was destined to gain by exertion, to conquer all that is necessary for him, that there is no ready-made happiness, not even comfort for him. No fur protects his body, he has to clothe himself; no shelter is made for him, he must learn to build one; his hand is no weapon like the corresponding limbs of many animals, he has to invent arms and instruments for it. Instead of the many specific physical instincts with which the brute creation has been endowed, he has received superior intellect, but this intellect itself has first to be developed gradually from generation to generation.

The golden dream of original happiness was coupled with another equally erroneous view. Man saw the perfect laws of nature on the one hand, and the many real or supposed imperfections of human institutions on the other, degeneracy and enervation, folly and discontent; it was concluded therefore that all was owing to his abandoning or counteracting nature, as if it had been the object of the maker of all to place man on a par with the brute or inanimate creation. The fact, which could not escape observation, that in many cases man had actually left his true nature, came in support of this view. Times like those in which Rousseau wrote, when the most burdensome and disfiguring dress corresponded to the shorn, crippled, and denaturalized parks and gardens, and when vice in the king's mistresses was elevated to political rank, established almost as a state institution, furnish us easily with a key by which we may explain the opening sentences of Emile, his work on education. "All is good," he says, "as it comes out of the hands of the author of things: everything degenerates in the hands of man. He forces one land to nourish the productions of another, one tree to bear the fruits of another; he mixes and confounds the climates, the elements, the seasons; he mutilates his dog, his horse, his slave; he overturns everything, disfigures all; he loves deformity, monsters; he wishes nothing to be such as nature has made it, not even man; he must be drilled like a horse in the riding-school; he must be tortured according to fashion, like the tree of his garden."[1] Rousseau forgot, however, that it is man too who improves upon unaided nature everywhere; he makes the soil bear hundred-fold, he enlarges the fruits, ennobles the stock, saves from destruction, unites what was severed, carries the blessings and pleasures of one climate to another,[1] and renders palatable what was repulsive, harmless what was poisonous; his horse runs more swiftly than the wild horse, his mule endures greater fatigue. Where is the heavy wheat with bending ear, except on his cultivated ground? where the grapes so delicious as those of his vineyard? Where in nature, as it is styled, are all the cerealia? The overcoming of the disadvantages and defects of climate is one of the boldest, noblest traits of man.

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[1] I am not desirous of mutilating in quoting, and shall add, therefore, the passage which explains the view of the author, and modifies, in a degree, what the reader may have conceived to be the meaning of the above. "Sans cela," adds Rousseau, "tout iroit plus mal encore, et notre espèce ne veut pas être façonnée à demi. Dans l'état où sont désormais les choses, un homme abandonné dès sa naissance à lui-même parmi les autres, seroit le plus défiguré de tous. Les préjugés, l'autorité, la nécessité, l'exemple, toutes les institutions sociales dans lesquelles nous nous trouvons submergés, étoufferoient en lui la nature et ne mettroient rien à la place. Elle y seroit comme un arbrisseau que le hasard fait naître au milieu d'un chemin, et que les passans font bientôt périr en le heurtant de toute part et le pliant dans tous les sens."

It will be seen, however, even from this passage, that Rousseau did share with so many other writers of his age the mistaken notion that man in a state of nature was as perfect as a tree.

XX. Trees, rocks, and rivers once being considered in a state of nature, and civilized man not, nothing was clearer than that the savage man was believed more natural, and consequently, by some, less depraved, than the civilized. Some of the acutest philosophers, as Hobbes, speak of the savage as man in a state of nature, from which it necessarily follows that they conceived civilized man as being in an artificial—a made—state. In fact, he and so many others with him were partly induced to consider the savage in a state of nature *because* government, the state, appeared to him as something made, agreed upon. If so, it was clear that some state of things must have existed before the *state was made*, and this state of things might, if such had ever been the case, be called a state of nature.

It would be difficult indeed to settle what, according to those philosophers, is the precise state of nature. Does man live in it only for one moment after his creation? Or does the tattooed savage, who beautifies, as he supposes, the body of his child with a variety of artificial and tormenting means, live still in a state of nature? Or is that a state of nature where men live without any sort of authority? If so, then he cannot be found anywhere in a state of nature. Or is that the state of nature where small hordes pursue each other, or where they live peaceably together? We find these uncivilized tribes in all these conditions and relations to one another. Why is war a state of nature, and not peace? Many of the rudest tribes disfigure their bodies far more extravagantly than any courtier of Louis XIV. or Charles II. did by his periwig and hair-powder? Why is the savage more natural?

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[1] A simple list of the useful and ornamental plants brought to England from the various quarters of the globe, with the time when first introduced, such as I have seen in various works, for instance, I believe, in Loudon's Encyclopædia of Gardening, and in one of the companions to the British Almanac, is well worth a moment's reflection. To how incalculable a degree have not comfort, health, enjoyment, delight, refinement, nay, life itself, been increased in England from the first rye and wheat which were carried across the Channel to the last tree imported from New Holland, by the "forcing of one land to bear the productions of another," as Rousseau calls it. Imagine Europe without this *bouleversement*, in ancient Celtic simplicity!

But we have to ask, what is, philosophically speaking, the true state of nature of any being or thing? Doubtless that in which it fulfils most completely that end and object for which it is made according to its organization, and the principles of its vitality—the fundamental law of its life and being. A dwarfish pine-tree on the high Alps, near the confines of perpetual snow, would, in its crippled state, certainly not be considered in a natural state; nor would a plant be called of natural growth if a too luxuriant soil has given it precocious exuberance, of which a deranged organism and early decay must be the consequence. Neither the haggard look of hunger nor the flush of fever is natural. Man, with his expansive faculties, progressive capacities, and moral endowments, capable of cultivation and requiring it; man, who has received an unprotected body indeed, but one which adapts itself to all varieties of climes, which is able to carry him through various stages of social progress, and is by its fine organization adapted to his moral and intellectual destiny, is not in a state of nature when all that characterizes him as man, and distinguishes him from the brute, is stinted and stifled by a life of savageness. Man was essentially made for progressive civilization, and this, therefore, is *his* natural state.

XXI. The reports of travellers on the moral state of man in the presumed state of nature corroborate what I maintain.

The inhabitants of Lord North's island are probably as unconnected with any other portion of the human family as we can imagine any community to be. Contrast Holden's Narrative of a Shipwreck on the Pelew Islands[1] with the presumed primitive excellence of man in a state of nature, severed from civilization. Their mind so contracted that they would not use the fish-hooks offered by the wrecked sailors, though they acknowledged them to be much superior to their own, made of turtle-shell, because Yarris, their god, would be angry at their abandoning the old-fashioned hook (in which particular, however, it must be owned, they substantially resemble many white and refined people); their disposition cruel, their habits indolent; their sense of right and wrong, and of decency, hardly awakened; improvident in the highest degree. Or ponder on such occurrences as Captain Back relates in his Narrative of the Arctic Land Expedition in 1833–1835, of the Cree Indian named Pepper (p. 175, in the American edition). They, at least, do not exhibit any inviting picture of the harmless state among the uncivilized. Nothing can bridle man's passions, and the undue action of the necessary primary agents of the human soul, but civilization, society, and that which can be cultivated in it alone in any high degree, knowledge and religion. Religion belongs to civilization. It is true, indeed, that each farther-advanced stage of society offers new opportunities for crime. Each new branch of industry, new field of activity, increased intercourse between man and man, offers, of necessity, an additional opportunity for offences. Use carries with it the possibility of abuse, and it thus frequently happens that the number of indictable and punishable crimes increases with a progress in civilization, but not necessarily, on that account, criminality. The art of writing alone made all the crimes of forgery possible—one of the most numerous offences in highly civilized countries; an Indian in the West cannot commit it.[2] The increase of the number of laws with the progress of civilization produced an early belief that increased immorality and criminality were the cause. But it is not so, notwithstanding the high authorities to the contrary. "Many men marvel," says Lord Coke, "the reason that so many acts and statutes are daily made; this verse answereth:

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[1] Boston, 1836.

[2] I have given my views on this subject in the Remarks on the Relation between Education and Crime, already quoted.

> Quæritur ut crescunt tot magna volumina legis,
> In promptu causa est; crescit in orbe dolus."

(Twyne's case, Coke's Reports, iii. 80.) So says Tacitus: "Corruptissima republica plurimæ leges" (Ann., iii. 27). I do not say that laws are not multiplied by corruption, but civilization must increase their number though corruption may diminish. It necessarily multiplies men's relations, because it develops their activity, and each new relation draws after it new laws to protect or regulate it. Each year brings forth, at present, many new laws, while the middle ages had comparatively few; and will it be maintained that immorality is now greater? Works like Wachsmuth's Moral History of Europe—a very extensive work—or Chateaubriand's Études Historiques will convince us at once of the contrary.[1] The number of the boxes in the apothecary's shop has increased; the variety of diseases is probably increasing with civilization, but not so mortality; mortality decreases with civilization. The variety of offences increases, but not criminality. There are, besides, many other reasons why the number of laws should increase. They are not collected, classed, and condensed, that is, codified at the proper time. Sir Francis Bacon and Chief-Justice Hale (see his preface to Rolle's Abridgment) already proposed and urged codification. Another reason is, that whatever people have a right to do, they will do too much of, if it involves some sort of privilege. The legislator likes to legislate; so those who have the right like to speak: lawyers, legislators, ministers, speak too much. Luther found it necessary to enumerate among the nine "qualities and virtues of a good preacher," as the sixth, that he ought to know when to stop (vol. xxii. p. 991). It is vain, however, to hope that the laws of a civilized nation can possibly be reduced to a few principles. They would produce incalculable litigation. Still, it is true, on the other hand, that civilization tends likewise to simplification, to a classification of what before was a mere mass without order—in common machinery as well as in scientific or political matters.

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[1] The many tables of moral statistics, drawn up from official documents, which have of late been published, are not discouraging.

XXII. My remarks do not only apply to the difference between civilized and uncivilized tribes; they hold good in other respects. The innocence of shepherds has been a frequent theme of former poets, so much so that pastoral poetry forms an important class in the literature of many nations. Lambs are innocent; but shepherds are not lambs. The ideas of rural simplicity and happiness associated with Arcadia are of a purely poetic origin. Shepherds, where they form a class, unconnected with society, are generally ferocious men, given to violence and brutality, and very frequently either in connection with robbers, or robbers themselves. I found the Greek shepherds a rude and wild race, described to me as dangerous people; the Italian shepherds or herdsmen form a part of the worst population; the herdsmen of Hungary are a rude and little restrained race. What sort of men, in a moral point of view, the Spanish shepherds are, who traverse the country with their merino flocks, I do not know; but we all know against how many revolting crimes Moses found himself obliged to provide by his laws. The Jews were then a nomadic tribe. The Bashkeers, likewise a nomadic people, tributary to the crown of Russia, and who followed the army against the French in the year 1813, were so rude that they could not be billeted in the houses of cities, but had to bivouac in the open squares. And yet does a man who spends his whole life on the back of his horse, and drives his camels from one steppe to another, not live "in a natural state"? In countries in which there are many shepherds, yet not forming a separate class, as in Germany, they are frequently distinguished by some peculiar knowledge, for instance, of medicinal herbs, but not, that I am aware of, for any higher or lower degree of morality. The early founders of cities have been justly renowned with all nations. Theseus was deified for having, among other deeds, united the inhabitants of Attica into a city; and annual feasts showed how much importance the Athenians attached to this step in the civilization of their chosen peninsula. The German emperor Henry the City-Builder is ranked among the greatest benefactors of Germany.[1]

XXIII. The family, so important an agent in leading man to society, to civilization, obtains a higher importance with every progress which society makes in civilization; for the family is natural to man, and all that is natural to him, that is essentially human, is more clearly developed with each advancing movement in civilization. With the higher importance of the family the woman likewise approaches that true position for which she is calculated. This higher importance of the family, and in it of the woman as wife and mother, is not only a general one by way of influence upon society, but it is more distinctly manifested and acknowledged by specific laws, which pronounce the sacredness of matrimony, secure the rights of the woman in her capacity as wife, mother, or in her single state, by the laws of inheritance, by securing the rights and protection of children in infancy, by providing that relations in an ascending or descending line are not bound to inform against one another,[1] that escapes favored by relations shall not be punished, etc.[2]

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[1] Our languages, likewise, testify against the poets. Villain is from *villanus*, which signified in Low-Latin a villager; and though it might be objected that the present meaning of villain is attached to the word owing to its having meant originally a bondsman, a vile fellow, there are other languages which involve the same idea. *Dorperheid*, from *dorp*, the Dutch and old English for village, so that the word literally translated would be dorpishness, signified in the seventeenth century (the word is not any longer much in use), in Dutch, vileness, villany. I do not mean to intimate that the rural population in our times forms the focus of crime and worthlessness. Far be it. Criminal statistics show that in most civilized countries the agricultural districts are less productive of crime than others. The reason is because the latter are generally of a manufacturing character; and manufactures, together with other circumstances, existing in many countries, furnish an abundance of crimes. This last remark does not apply to the United States; but the works of Guerry, Dupin, Julius, and other statistical writers on criminal matters show this relation to exist pretty generally in Europe. I merely intended to show that the languages indicate that civilization and morality do not necessarily go hand in hand with a separation from society, and that both are originally the fruits of a life taking the forms of larger communities.

Woman has received, in the great order of things, a different physiologic organization and mental bias from those of man. The Creator has directed her to receive her impressions more through the channel of feeling; she has been endowed with a more tender sensibility; man has to rely more upon reflection. Her consequent position in the state, and natural sphere of action, will be treated of in a subsequent part of the work. Suffice it here to say that she steps beyond her proper circle of activity, which is emphatically that of the family, through which nevertheless she becomes a most essential ingredient of the state, if she abandons the sphere of tender sentiment, of affection, peace, and love. And as nowhere the essential order of things can be violated without incurring great danger, so does the woman expose her morality and whole true character, and, therefore, society, to danger, the moment she interferes with politics. "When a woman gives her mind to politics, she becomes best acquainted with what is least respectable in them—their personalities."[1]

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[1] Kinsmen in the ascending or descending line, sisters and brothers, husband and wife, and those related by marriage in the first degree, are not bound to inform against one another, nor are they bound to such preventive actions as would necessarily lead to such information. (Bavarian Penal Code, article 79.) But ascending-kinsmen, husbands, are bound to endeavor to prevent the crime, or they are punishable. The explanation of this law, in the Notes to the Penal Code, vol. i. p. 212, speaks of the sacredness of the ties of blood, which the state shall not tear asunder.

[2] The Proposition of a Penal Code for the kingdom of Würtemberg, Stuttgard, 1835, declares relations in a still more remote degree free from penalty if they personally protect the criminal, without of course injuring others or interfering with public authority. See article 86.

The Proposition of a Penal Code for the kingdom of Norway, Christiania, 1835, declares the same free from penalty if they hide or assist a criminal kinsman to escape. See article 10.

See the Motives published with both these Propositions, which by this time may have become the law of the land.

It is curious that the Chinese penal code, throughout of a severe character, still holds relations who assist a criminal free from guilt. The great reverence inculcated by the Chinese towards parents was undoubtedly one of the motives. The code decrees, " All relations connected in the first and second degree, and living under the same roof, maternal grandparents and their grandchildren, fathers- and mothers-in-law, sons- and daughters-in-law, grandchildren's wives, husbands, brothers and brothers' wives, when mutually assisting each other and concealing the offences one of another, and, moreover, slaves and hired servants assisting their masters and concealing their offences, shall not in any such case be punishable for so doing." More distant relations are punished more severely, according to the more remote degree of relationship. Ta Tsing Leu Lee, Penal Code of China, translated from the Chinese by Sir George T. Staunton, London, 1810, 4to, p. 34 et seq.

On the other hand, we find her in a deplorable condition before she has been raised by some degree of civilization. Ledyard and Mungo Park received kind attentions at their hands, while we find in Holden's Narrative, cited already twice, the following passage on page 93: "And what may be regarded as remarkable, the female portion of the inhabitants (of Lord North's island) outstrip the men in cruelty and savage depravity, so much so that we were frequently indebted to the tender mercies of the men for escapes from death at the hands of the women."[2]

XXIV. The family cannot exist without marriage, nor can it develop its highest importance, it would seem, without monogamy. Civilization, in its highest state, requires it, as well as the natural organization and wants of man. Cuvier, in his repeatedly quoted Animal Kingdom (vol. i. pages 76, 77), says, "The nearly equal number of individuals of the sexes, and the difficulty of nourishing more than one wife when riches do not supply physical strength, show that monogamy is that sort of connection which is natural to our species, as well as the fact that among all those animals with whom this species of union exists, the father takes part in the rearing of the child." Where polygamy is lawful, few avail themselves of this permission, simply because the support of several wives with their offspring requires means beyond the reach of far the greater majority of people. On the other hand, it will generally be found that those who can support several wives select one in particular who is pre-eminently considered the companion to the master of the house. In many cases she is distinguished by a peculiar title. The Greeks mentioned it as an important step in civilizing their country, that the mythical Cecrops established monogamy. They knew monogamy only;[1] so did the Romans. They held this most elementary of all institutions and first requisite of civilization in high honor, until the period of universal degeneracy under the emperors, and then even did the imperial laws evince that marriage, viewed with regard to the merest political utility, is of essential importance; as likewise late statistical accounts seem satisfactorily to prove that concubinage extends its enervation to the offspring.[2] Cato the Censor said, according to Plutarch, that he considered an honest husband higher than a great senator, and Ulysses, returning from war and glory, wishes kind Nausicaa, for all her humanity shown him, a husband and a house. "May the gods grant thee all thy heart desires, a husband and a house; and bless you with peace and concord. Happy ones!

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[1] Taylor's Statesman, London, 1836, page 72.

[2] The great depth of immorality to which a woman is much more apt to sink at once by crime, and how exceedingly difficult it becomes to reclaim female offenders, have been treated in the Introduction to Lieber's Translation of the Penitentiary System in the United States, by Messrs. de Beaumont and de Tocqueville, Philadelphia, 1833, page xiii. et seq.

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[1] The tales of the bigamy of Socrates and Euripides have long been disproved. Two cases only form an exception, that of Anaxandrides in Sparta, obliged to take a second wife on political grounds (Herod., 5, 40), and of Dionysius the Elder, of Syracuse (Diod., 14, 44).

[2] See chap. iii. of the first book of Quételet sur l'Homme et le Développement de ses Facultés, Paris, 1835.

Nothing, in truth, is more desirable and rejoicing than when husband and wife, united in faithful love, administer quietly their house—a bitter sight to the enemy, but a delight to the friend." (Odyssey, 6, 180 et seq.)

XXV. It is in the family, between parents and children, and sisters and brothers, that those strong sympathies and deep-rooted affections grow up which become the vital spark of so many good actions, which are the medium through which we view other and vaster spheres with purer, intenser feelings, and which survive those blasts of later life which would fain chill most hearts into cold egotism. With them is mingled and a thousandfold entwined all that attachment which expands into patriotism—that warm devotion to our country which loves to dwell in every noble heart, and without which no free state can long exist. The love of our parents, of our children, of our brothers and sisters, makes patriotism a thrilling reality. Why is it, otherwise, an expression which goes through all centuries and appeals directly to every soul to fight for our hearths? Why has the word hearth been chosen for country? Because there we see it most clearly, feel it most deeply. Return from an arduous war, from a long absence, and see the first high mountains of your country; it is a happy feeling indeed, but it is more thrilling still when you see the stile which leads to your father's meadow. Why does the word home speak so directly to our heart? Because the home contains what is choicest for us in the country. How full of meaning are the words "bound home," when they sound from a vessel which you pass, yourself sailing to distant climes!

Leonidas, when he prepared himself for his heroic sacrifice and selected those who were honored to die with him, chose men of a mature age and who had children. The sight of Rome could not melt the stern heart of Coriolanus; his wife and mother could. When a hero, with encircled brow, has passed through the crowded streets, and has received the thanks of his country in the capitol, and his heart is big with glory and throbs with joy, he hastens home to drink the joy of joys, in the arms of his wife and his parents. When he is doomed to die a martyr to his country, as Padilla, Egmont, or Barneveldt, his last words are directed to his wife, to his children, to his family. These ties, indeed, must be severed when the alternative is between family and country; so must at times the love of country yield, when the alternative is between it and the love of mankind. (See Patriotism.) When Timoleon saw he could not prevail on his brother Timophanes to desist from his tyrannical course of usurpation, the faithful lover of liberty conspired even against him, but still "Timoleon stepped aside, and stood weeping, with his face covered, while the other two drew their swords" and slew the tyrant. When Arnold Winkelried, in the battle at Sempach, saw that his countrymen could not advance against the dense wall of Austrian lances, he stepped forward and said, "Dear confederates, I'll break a path for you; think of my wife and dearest children," and buried in his breast as many lances as he could clasp, and tore them down with him. But who can say how much at that very moment the thought urged him that he would purchase liberty with his blood for the land of his very children?

XXVI. The family is the focus of patriotism. Public spirit, patriotism, devotion to our country, are nurtured by family ties, by the attachment to our community, the interest in our country, the associations with our district, our province, as the love of our country enables us best to understand the deeds of other nations. We have little regard for a man who loves his country in general, in the abstract, and does not take an interest in the improvement or embellishment of his own place. A man who does not love his hamlet will not die for his country, still less live, labor, toil for his nation. We shall presently see how mistaken those are who believe that the state is nothing but an association founded upon material interest, and not a society of closely united men. If they were right, the state might dispense with public spirit·

but it cannot. Where public spirit has departed, the commonwealth is corrupt; but public spirit is generated first in the family, for through it we are in a visible and tangible way connected with what otherwise would remain for most men a bare abstract idea, unable to animate, raise, inspire, cheer on, and prepare for sacrifices. The members of a state are not wheels of clock-work, working, indeed, with each other, but not feeling for one another. Let sympathy and disinterested affection come whence it may, so that we have it—a refreshing dew upon the arid fields of practical life.

XXVII. The Jesuits condemn the love of our kinsmen as a carnal inclination,[1] and they praise a member of their society for having so entirely conquered his feelings that he could quietly pass his native place after a long absence, and in spite of the strongest desire to see his relations.[2] But so is parental love, in its origin, carnal; so is marriage, which we have found to be so important an element of civilization, originally founded in the material world. It is a principle in nature that the first impulse is given by the physical world, by relations of matter; but we have to develop, perfect, transform, ennoble, spiritualize them. It is a well-known fact that the vast machinery of industry, so necessary to civilization, is chiefly set in motion by the wants of man to satisfy his appetite, far more so than by the want of protecting his body or the necessity of clothing and housing. *C'est la faim, c'est le petit ventre qui fait mouvoir le monde,* said Napoleon (Las Cases, vol. v. p. 32, Paris edit. of 1824). But is, on this account, all industry a mere matter of the belly? There are, at times, higher considerations than those of our family and our country; but take these elements away, and you blot out at once a thousand of our noblest emotions, most effective agents of the moral world, and surest principles of society. There is much truth in the remark of Madame de Staël, that "it is necessary to make the choice of our object with enthusiasm (if we only understand this word right), but we must march towards it by the aid of character. Thought is nothing without enthusiasm, nor action without character. Enthusiasm is everything for literary nations; character is everything for acting nations; free nations are in need of one and the other."[1] And what kindles this enthusiasm, by which we are to understand an inspired attachment to what is good and great, independent of the calculations of interest? Chiefly the family and a noble and inspiring history of our own nation.

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[1] Summarium Constitutionum, § 8, in the Corpus Institutorum Societatis Jesu. Antwerpiæ, 1709, t. i.

[2] Orlandinus, iii. 66, mentions the case. The Jesuit's name was Faber.

If ancient philosophers maintain that, according to the example of the Lacedæmonians, the family ought to be abolished, and even Plato, in his Republic, proposes to take the new-born babes from the parents of the first class of citizens who had been previously united by the state, with a view of propagating a sound race, it will be easy to understand them, after we shall have seen the essential difference between the views which the ancients took of the state and its object, and those of modern times. When, however, modern writers propose a similar annihilation of the family, as some actually have done, it only shows that they have no correct views of man's individual value, of the family, and of what they ought to be in modern times, or that they have proposed a false remedy for the existing evils in private education.

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[1] De l'Allemagne, par Mme. de Staël-Holstein, Paris, 1810, tome vi. p. 90.

CHAPTER IV.

What is the State?—By what Characteristics does it differ from the Family?—The State a Society.—Various Human Societies, according to the various Relations.—Relations of Consanguinity, Exchange, Comity, Intellectual Communion, of Right.—What is Right?—The State is the Society of Right.—The Just is its Fundamental Idea.—Objects of the State.—What is Protection?—The State requires General Rules; its Members are not absorbed by it; every one has Claims upon it; it is a Moral Society; it exists of Necessity.—The State remains a Means.—The Individual above the State; the State above the Individual.—The State, as such, has Rights and Obligations; the State does not make Rights, but acknowledges them.—Civilized States far the most powerful.—Man by Nature a Political Being.—Man never exists without the State.—The State is no Insurance Company.—Protection of Life and Property not the only Objects, nor the highest.

XXVIII. THE family, however important, is not a sufficiently extended society to lead man to his great destiny—to civilization. Men must live in wider unions, they have to establish relations and to develop ideas, which can never be fully obtained in the family alone. A union of a different character is required—it is called the State. The prevailing idea in the family, that determines the character of the intercourse between the members, is mutual attachment depending on personal relations, to which man is first induced by the ties of consanguinity, on kindness and forbearance, on a degree of disregard of one's own personal considerations. That which renders the family so admirable, so holy, is love, and a continued forgetfulness of a separate individual interest. The fundamental idea of the state, on the other hand, is justice, the right which exists between man and man. That which renders the state so great and important is, that it maintains right, protects and is a continual guard over the individual right of every one; that it demands of no member an obligation on his side alone, but knows of mutual obligations only. There shall be no duty in the state for the performance of which the citizen does not receive an equivalent. Family and state, then, do not only differ as to size, but they differ in their characteristics and essentials, whatever confusion to the contrary may in many parts of the world exist. The monarch is frequently represented as the father of his subjects; and this misrepresentation alone has caused mankind to pass through infinite suffering. In few instances has the danger of analogy shown itself more banefully than in this. It has induced people to establish claims, or to submit to them, which are calculated to throw society into disorder, and to lead it to those disastrous consequences which never fail to be the effect of mistaken notions respecting elementary principles of society.[1] Still, I do not mean to say that in the course of civilization stages were not necessary, in which the ideas of family and state were yet closely interwoven with one another, and were mixed up in the patriarch; nor that the state in many instances actually did not grow out of the family. The Asiatic nations prove this fact. The family grows into a tribe, the tribe into a nation;[2] and even with those nations and states which originated from a fusion of many discordant elements, as the noble people of Attica out of the mixture of Pelasgi,

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[1] * [From a long paper left by Dr. Lieber we select the following passages:]

If the principle of the family is applied to a state of any extent, in which personal acquaintance and attachment of some degree becomes impossible, if the *patria potestas* is applied to the state, or, as the Chinese say, filial duty is the base of the state, it cannot otherwise than lead to absolutism and tyranny. For we have seen that one of the characteristics of the family is the discarding of strict right and the adhering to mutual attachment, while the just authority of the parent is restricted only by this personal attachment and the natural relations of consanguinity. But this personal attachment cannot exist in an extensive state, and but in a very limited degree in the smallest one, so that nothing remains but unlimited authority without the moral control existing in the parental relation. [He then illustrates what he has said by the state of things in China, citing especially Davis's Chinese, u. s. i. 202.]

[2] I know of no more striking instance of divisions and subdivisions according to family relationship, and a government founded upon it, than the one described by the Hon. Mountstuart Elphinstone, in his Account of the Kingdom of Caubul, etc., London, 1815, chap. ii. p. 158, et seq. Mr. Elphinstone was sent as envoy to the king of Caubul. The work is valuable in many respects.

Ionians, and others, and the British nation out of Britons, Romans, Saxons, Danes, and Normans, the state grew originally out of the family, in so far as the idea of justice grew with its enlargement; but everything, every institution, every art, every science, begins in an undefined state, mixed up with others, and is more distinctly developed only with the progress of civilization. Medicine, architecture, and the ministry are, at present, questionless three very distinct employments, though originally all three were united and undistinguished from one another in the priest. Painting and writing were at first the same thing, they are now essentially different things.

XXIX. Again, what is the state? All civilized nations are now agreed that the state is a society; no man will be so bold as to pretend that an individual, a monarch, can be the state, as Louis XIV., when a boy, asserted of himself. As to the essential character of the state, however, its true foundation and origin, its aim and object, power and extent, people are not agreed. Let us see whether it be not possible to arrive at a satisfactory answer to so momentous a question.

The state is a society. What is a society? A society is a number of individuals between all of whom exists the same relation—the same as to its principle, however modified it may be in other respects; or it is a number of individuals who have the same interest and strive unitedly for it. The individuals or members of a society exercise, therefore, a more or less intense influence upon one another. The Catholic Church is a society; between all members, the cardinal and lowest layman, exists the relation of religion and the same religious discipline. These fundamental relations constitute the peculiar character of the society, and are called its ties. Societies may be temporary unions with stated objects, or they may rest on relations not entirely or not at all controllable by the members—on *given* relations, with general objects chiefly to be learned from the fundamental relations themselves between the members. By way of greater distinction, I would call the former associations companies, the latter, by way of excellence, societies. Insurance companies, charitable societies, academies of science, are associations; nations, states, communities, are societies.

Now, all the relations in which man may be placed are:

Relations to things, comprehending within this term animate and inanimate things. Property, as we have seen, rests on one of these relations.

Relations between man and man.

Relations between man as the creature, the made being, and his Creator or Maker, or between man as the inferior and guided being, and the superior and guiding being. All that appertains to these relations is included in the comprehensive term of religion.

The chief relations between man and man seem to be these:

1. The relation of consanguinity. One of the societies resting on this relation is the family.

2. The relation of exchange. Labor must be divided, as we have seen, and men stand in constant need of each other according to the individual and territorial division of labor. The shoemaker must have bread from the baker; the German wants rice from the Carolinian, and sends linen to the South American. Let us call this the catallactic or diallactic relation, from *καταλλάσσω*, or *διαλλάσσω*, to exchange. Catallactics is far the best name which has been proposed for political economy. The name is peculiarly apt, for the Greek word does not only mean to exchange, but also to exchange hatred, to *reconcile*, and what reconciles man to man, nation to nation, more powerfully and originally than the exchange of their produce? By the catallactic relation I understand the exchange of labor, produce, service, capital, and skill, by way of value, in the sense in which it is taken in political economy, not the exchange of thoughts, sentiments, discoveries. The catallactic relations form one of the original, most enduring, active, and indestructible ties of society; and the society

founded upon it has, consequently, been mistaken for the state. Plato commits this error, and when he supposes that he shows the origin and true character of the state (in the second book of his Republic), he only shows the origin of the catallactic society; but this society may be narrower or wider than the state. Nothing is more common than that the citizens on the frontier of one state have a constant catallactic intercourse with their neighbors of another state, and hardly any with their fellow-citizens of the interior. That Plato committed this error can easily be accounted for. Most Greek states were cities; they had but one word for both; the idea of a city community was ever before his eyes when he reasoned on the state. It is very difficult to elevate ourselves above associations which have their foundation in everything that surrounds us. Thus, the fact that in Europe, or on the whole earth, there are far more monarchies than republics, has, with few exceptions, strongly affected all the reasoning of European writers on the state so decidedly, that the effect extends to their arguments on the origin of the state. No one can study Hobbes without perceiving it. Subject and citizen are inadvertently used by many as convertible terms. Yet monarchy, republic, despotism, etc., are but subdivisions of the same class.[1]

3. The relation of comity, under which I comprehend all that is called, in common parlance, social intercourse, with all the views, opinions, enjoyments, prejudices, and sufferings connected therewith.

4. The intellectual relations, to which belong the many strong ties which grow out of a constant exchange of

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[1] * The fact that Rousseau lived in a small republic, with much of a democratic element in it, influenced his writings much: his Social Contract would never have formed itself as it is in a large state. How much have the United States affected me? The fact that I live in a large republic was probably favorable. Perhaps I too am unconsciously affected. Yet I have lived under many other governments, and where there was none at all—in Greece.

thoughts, feelings, and taste, as uttered in speaking or writing, the strong ties of a common language and literature, of the fine arts, sciences, and national custom. The society founded on this relation extends, in Germany for instance, far beyond the states. It is very naturally the strongest of all ties in the general course of things. Sometimes peculiar reasons will make other relations for a time more active. A bond which frequently rivals it is the relation of religion; both strongly affect the inner man—his feelings, and therefore the direction of his thoughts. The Belgians felt more sympathy with the French, as long as they belonged to the kingdom of the Netherlands, than with the Dutch.

5. The relation of right. The society founded upon this relation is the state. What is right?

XXX. Man, it has been shown, is a moral individual, yet bound to live in society. He is a being with free agency—freedom of action; but, as all his fellow-men with whom he lives in contact are equally beings with free agency, each making the same claim of freedom of action, there results from it the necessity, founded in reason, *i.e.* the law, that the use of freedom by one rational being must not contradict or counteract the use of liberty by another rational being. The relation which thus exists between these rational beings, this demand of what is just made by each upon each, is the relation of *right;* and the society founded upon this basis, which exists because right (*jus*) in its primordial sense exists and ought to exist between men, which has to uphold and insist upon it, which has to enforce it, since every man has a right to be a man, that is, a free-acting or rational being, because he is a man—this society is the state.

Right is that which I claim as just, because necessary to me as man and granted by me to others; it is the condition of men's union, that by which man's individuality or personality on the one hand, and sociality on the other, can coexist. This is the most comprehensive meaning of the word, and applies to what I have called the society of comity as well as to the state. We say, as to social intercourse, every man has a right to call on another. What, then, are the rights, in particular, on which the state is built? Are the relations of social intercourse unimportant? Far from it; in many cases they are of utmost importance to the whole well-being of man, and even outweigh the relations of which the state takes notice by positive law. A negro may, according to the constitution of some of the United States, vote, and is not legally prevented from obtaining any the highest office, or from be coming among other things teacher in a university; he has the political right or the right guaranteed by the state. Yet there is for the present no earthly chance for a colored man to become mayor of Boston, because the society of comity denies him the right; the white race feel repugnance at close association with him; the difference of race has established in a degree a difference of sympathy. Should then not the state enforce this right of the negro? Enforce what? Oblige whites to invite the African? Would not the whites complain of interference with their right of being perfectly independent at home? And here we have arrived at the proper distinction.

The state is founded on those rights which are essential to all members, and which can be enforced. Political enfranchisement was for a long time not as important to the Jews in Europe as social enfranchisement; in fact, they justly considered the former but as the stepping-stone to the latter; still, the latter could be made no state relation, it could not be legislated upon. Frequently it will happen that social rights finally become acknowledged by the state; so will rights originally belonging to catallactic society. We call rights, by way of excellence, those rights on which the state is founded, or enforceable rights.

The state, then, is that society which has to protect the free action of every one, as its first basis; and, as all the other enumerated relations imply action (for with the exception of the relation of consanguinity all manifest themselves in some way or other by action), each of these relations becomes likewise a relation of right, either claiming to be enforced or to be protected against infringement. If a father amuses his children with soap-bubbles, it is an action of a very private character indeed; yet the moment that another would wilfully interfere, the state is bound to protect the father. A cat is, generally speaking, a subject of no public interest, but actions have been brought and sustained against the wilful destroyers of a favorite cat. The exchange of my labor or superfluity for other commodities must be protected. My fancies, my very follies, if they do not interfere with the rights of others, must be protected. However droll a will may be, if not immoral, it must be protected. In this sense the state is the society of societies. The state does not beg, invite, request, implore—the state demands, it speaks through laws, laws which command, that is, which must be obeyed. If it were to ask something for the sake of love, or good will, of one, it would neglect the other, whose right may have been transgressed, or whose right may be involved in the execution of the law.

XXXI. The state, I said, is founded on the relations of right; it is a *jural*[1] society, as a church is a religious society, or an insurance company a financial association. The idea of the just, and the action founded upon this idea, called *justice*, is the broad foundation and great object of the state. Bracton[1] says, "Quia a justitia (quasi a quodam fonte) omnia jura emanant, et quod vult justitia, idem jus prosequitur: videamus ergo quid sit justitia et unde dicatur: Item quid sit jus et unde dicatur et quæ sunt ejus præcepta." It is very easy to write nowadays better Latin than this old jurist, but not to write better sense than this. Our idea of what the state is, is precisely expressed by Cicero (de Republ., i. 32),

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[1] If there is no word which distinctly represents our idea, to express which we nevertheless consider of much importance, a new one must necessarily be made, or we slavishly subject the mind to the language, the object to the means. How else is the idea to be expressed? Should I say that the state is a political society? This is nothing but arguing in a circle, which would be at once apparent had we adopted the Greek for the noun as well as the adjective, and were to say, *polis* is a political society. No doubt it is; so is a cat a feline animal, and sugar a saccharine substance. I stood in need of a word which bears the same relation to state, as society, that the word religious has to church. The church is a religious society. We would express nothing by stating that the church (ecclesia) is an ecclesiastical society. If the word is not in good taste, if it does not strike the ear well, I can only say, I could find no better one than this, similar to rural from rus. The Greek language has no different words for *lex* and *jus*, *νόμος*, as the English has but law, while the French have droit and loi, the Germans *Recht* and *Gesetz*. The word *legal*, it will at once be seen, signifies something entirely different from *jural*. Jural relations exist before and

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without laws. The very want of words has misled many who have written on the subject; as if right were made by law; rights, privileges are made, but not *right, jus*—the *æquitas communis, æquum universale.*

I ask permission to quote here an extract from a work of that acute reasoner, St. Augustine, being in point as to the subject of the above paragraph:

"Quapropter nunc est locus, ut quam potero breviter ac dilucide expediam quod in secundo hujus operis libro me demonstraturum esse promisi, secundum definitiones, quibus apud Ciceronem utitur Scipio in libris de republica, numquam rempublicam fuisse Romanam. Breviter enim rempublicam definit esse rem populi. Quæ definitio si vera est, numquam fuit Romana respublica; quia numquam fuit res populi; quam definitionem voluit esse reipublicæ. Populum enim esse definivit cœtum multitudinis, juris consensu et utilitatis communione sociatum. Quid autem dicat juris consensum disputando explicat; per hoc ostendens geri sine justitia non posse rempublicam; ubi ergo justitia vera non est, nec jus potest esse. Quod enim jure fit, profecto juste fit. Quod autem fit injuste, nec jure fieri potest. Non enim jura dicenda sunt vel putanda iniqua hominum constituta; cum illud etiam ipsi jus esse dicant, quod de justitiæ fonte manaverit; falsumque esse quod a quibusdam non recte sentientibus dici solet, id esse jus, quod ei qui plus potest, utile est. Quocirca ubi non est vera justitia, juris consensu societas cœtus hominum non potest esse; et ideo nec populus, juxta illam Scipionis vel Ciceronis definitionem, et si non populus, nec res populi; sed qualiscumque multitudinis, quæ populi nomine digna non est. Ac per hoc si respublica res populi est, et populus non est qui consensu non sociatus est juris, non est autem jus, ubi nulla justitia est; procul dubio colligitur, ubi justitia non est, non esse rempublicam. Justitia porro ea virtus est quæ sua cuique distribuit. Quæ igitur justitia est hominis, quæ ipsum hominem Deo vero tollit et immundis dæmonibus subdit? Hoccine est sua cuique distribuere? An qui fundum aufert ei a quo emptus est, et tradit ei qui nihil in eo habet juris, injustus est; et qui se ipsum aufert dominanti Deo, a quo factus est, et malignis servit spiritibus justus est?" De Civitate Dei, lib. xix. cap. 21.

[1] Henry Bracton, who lived in the thirteenth century, De Legibus et Consuetudinibus Angliæ, lib. iv. c. 4.

"Quid enim est civitas nisi juris societas?" More pithily it has been expressed by Cousin (Cours d'Hist. de la Philos., Paris, 1828, p. 14), "La justice constituée, c'est l'état." Of this justice let us adopt Ulpian's definition, "constans et perpetua voluntas suum cuique tribuens," provided we understand by voluntas not potentia volendi sed actus, and connect with suum cuique not the limited view of property or personal safety, but this and much more, namely, the great object of society, of which more presently. See also the interesting account of the jural origin and character of the state in Herod., i. 96, et seq. Whether true or not, it presents the views of the people at that early period.[1]

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[1] I will transcribe the translation of this very curious passage: "There was a man among the Medes of the name of Deioces, a son of Phraortes, of great wisdom, who longed for power, and he acted thus: The Medes lived about in their hamlets, and as he enjoyed already great reputation in his own, he practised justice still more attentively and zealously. And this he did, because lawlessness was great throughout Media, and he knew well how the just hated injustice. And the Medes of his place, as they saw how he did, made him their judge, and because his eyes were directed to the supreme place, he acted fairly and justly, by which he gained no little praise with his fellow-citizens, so that those who lived in the other hamlets, when they learned how Deioces judged according to justice only, since they themselves had suffered already by unjust sentences, when they heard of this, went with pleasure to Deioces, that he might give judgment to them too, and at length they went to no one else any longer. But when the number of those who repaired to him went on increasing, because they perceived that his sentences were always according to wisdom, and Deioces saw that everything depended upon him, he declined any longer to sit in judgment, and said that he would not any longer be judge; for he had no leisure to decide cases for others every day and thus to neglect his own affairs. When after this, violence and lawlessness in the places about became worse than before, the Medes assembled, and held council with one another, and consulted on their situation. The friends of Deioces may, as it seems to me, have spoken thus: 'If things remain as they are now, we cannot dwell any longer in our land. Up, then! let us elect a king, and our land will be ruled according to right, and we may go to our work, and we need not leave our country on account of lawlessness.' Thus they spake, and persuaded the Medes, so that they elected themselves a king. And soon they consulted whom they would place above themselves as king, and Deioces was proposed on all hands, and much praised, until at length they unanimously resolved he should be their king." Perhaps it is worth while to mention here that the ancient jurists of Aragon believed, according to a tradition, that the famous institution of the *justicia* originated at the same time

At all times has justice been considered as the main, or one of the chief objects of the state, though, in many instances, by justice nothing more than protection of person and property, or rather punishment of offenders, was understood.[1] To protect the widows and orphans (that is, the weak) was invariably given as one of the chief reasons why power—the sword—had been given to monarchs. "The saints have said that the king is placed on earth in place of God to fulfil justice and to give to every one his right and due (*su derecho*), and as the soul is in the heart and gives it life, so is justice in the king,"[2] was the Spanish view at the times of Columbus. Every coronation oath, every admonition of monarchs, points to it from early times. (See the Civil Law, and Luther on the Duties of a Prince in vol. v. p. 1041, et seq.) Even Timur, while he praises his government chiefly for having administered justice and supported religion, founds even his right of conquest on justice, to expel iniquity, tyranny, and oppression.[3] Hence the early and universal distinction between the individual invested with the crown and the regal office itself, notwithstanding the extravagant and not unfrequently absurd theories, which strive absolutely to confound the person of the king and his office, to the contrary. Whatever may be advanced under the hallucination of divine absolutism, it is impossible to carry out the theory, and no principle of gov-

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with the election of the king. Thus wrote Juan Ximenez Cerdan, a most esteemed Aragonese publicist, in 1435, to the justicia. According to some, the justicia was elected before the king. (E. A. Schmidt, Gesch. Arag., p. 409.)

[1] It is interesting, on this account, among so many others, to read large and contiguous collections of the charters, compacts, etc., of a nation, such as, Recueil Général des anciennes lois Français depuis l'An 420 jusqu'à la Révolution de 1789, by Decrusy, Isambert, and Jourdan, Paris.

[2] This passage is contained in the appointment of Columbus as Admiral of the Indies, to be found in the Codice Diplomatico Colombo-Americano ossia Raccolta di Documenti originali e inediti spettanti a Cristoforo Colombo, alla scoperta ed al governo dell' America, Genova, 1823, 4to, pages 47 and 63.

[3] Institutes, Political and Military, written originally in the Mogul Language by the Great Timour, first translated into Persian, etc., and thence into English, by Major Davy, Persian Secretary to the Commander-in-Chief of the Bengal Forces, Oxford, 1783, 4to, page 331.

ernment proves the distinction more clearly than absolutism itself. Suppose an absolute king to be attacked by a violent fever; he raves; the physician orders him to be held, and does the very contrary from what the delirious monarch demands. Is there in this case no difference between monarch and crown? Suppose, farther, the king's disease ends in derangement of mind, the successor declares himself or is declared king, or regent. Is there no difference made between the individual and the crown he personates? Whence is the right derived of superseding the unfortunate predecessor? He still exists individually. The English made a very early distinction between a resolution in the king's breast and a resolution of the king in council, or voluntas interna seu naturalis and externa seu legalis. (See Hampden's Trial for ship-money, State Trials, vol. iii. p. 861.) So distinctly was the difference acknowledged by the English long ago that, though all justice is administered in the monarch's name, his presence at the trial of Earl Strafford was not considered as official; because "in his presence, by legal construction (by a most philosophic view), no judicial act could legally be done." The throne was empty, and Charles was in a box with trellis-work. But Baillie says that the king broke down the screens, so the court sat in the eyes of all; yet they were considered officially absent, "and the lords sat covered." (Baillie, principal of Glasgow College, was present.) The parliament of Paris declared, in 1648, that the words, sur le bon plaisir du roi (or, car tel est notre plaisir), are used to give a degree of respect to the government of the king, by no means to sanction that which is irrational, or to signify that he needs no council. (Portal., 167.) And this was under Mazarin, immediately after Richelieu's administration.

XXXII. All relations existing in the state, or all strictly political relations, are relations of right—jural relations. The individual *demands* of the state that his right—his jural relation to others—be maintained inviolate, and the state *demands* that the individual do not interfere with the right of others, or, in other words, do not disturb their jural relations. Finally, the individual, being unable to obtain those ends for which he was placed on earth or made a man, in a state of insulation, but being compelled, by a necessity founded in his very nature, to live in society, it is matter of right that he obtain through and conjointly with society what he cannot obtain singly, and what, nevertheless, is essential to his well-being as man. The state, therefore, has the right and the duty to obtain all these ends by the combined energy of society for each individual. We see thus that protection in its wide and true meaning, not in its narrow sense, signifying nothing more than a prevention of individual injury—that protection is the aim and object of the state, and that this protection is but another word for justice, in its broad adaptation, the obtaining and granting of that which every one demands of right, and as moral individual ought to demand—his due. We find thus that protection includes:

1. Individual security, which demands two things:

a. Protection against individual injury, or interference with me and my actions individually, that is, protection of life, limb, labor, property (which includes the owning of things and the acquiring of things, or use and appropriation of things unappropriated, and exchange), utterance or converse (speech and writing), honor (or reputation), virtue, religion, and family relations.

b. Making certain that which is uncertain; for uncertainty in matters of right is insecurity.

2. Social security, the protection of society as such.

3. The protection of each member as that being who cannot obtain save in conjunction with others, or through and in society, his great ends of humanity—those ends which are necessary, and yet cannot be obtained by the single man.

XXXIII. Every man is a being who has a moral character of his own, he cannot divest himself of individuality, and yet he is what he ought to be in society only. These three points are of fundamental importance in the state. If men have to live together, and yet must remain individuals, with individual pursuits, individual objects, individual desires and appetites, it follows that—

1. They must closely unite to obtain those objects which are of equal importance to all.

2. They must follow certain rules important for all, without which their individual interests would continually clash with one another, and society would become a far worse state than perfect insulation. Indeed, it is impossible to imagine any number of individuals living together without observing certain rules, nor do we ever find any such society, for whatever purpose its members may have united. This necessity of observing certain rules implies the necessity of a power to enforce compliance. Without it, the rules would be useless in a society which is a society of right, and exists of necessity, not of option, nor a society of charity or love.

3. The members of this society never lose their individual character; they are not merged in the state; but their individual character, and with it those things which are necessary for it or comprehended in it, as life, free agency, or freedom of action, that is, the right of doing everything they choose to do, provided it do not militate with the freedom of action equally claimed by others, must be firmly and effectually protected.

4. Each individual has an undeniable right to live in society and to share its advantages, because he must of necessity live in society; and absolute necessity, that is, that necessity which results from the essential nature of man, is the first of all rights, which is, in other words, but what I stated above, when I said, the axiom of all natural law is, I am a man, therefore I have a right to be a man. Absolute necessity does not make right—a sentence often misused to represent, as right, what is wrong, though expedient—but absolute necessity *is* right.

5. The state being a jural society, and rights being imaginable between moral beings only, it follows that the state has likewise a moral character and must maintain it. From what

constitutes right, as has been shown, it appears that no right, consequently no specific rights, can exist between animals or irrational beings, since the right is founded on the claim each rational or moral being makes on every other rational or moral being.

6. Human society exists of necessity, and the state being part of the human society (with what specific characteristic, to make it a specific state, we shall see presently), in which the ideas of right and the means to obtain and protect it are more or less clearly developed, it exists likewise of necessity. Man cannot live without the state; it is necessary to his nature; the state is one of the natural states of man. This probably was meant by the celebrated Selden, when he says, "But in truth, and to speak without perverse affectation, all laws in general are originally equally ancient. All were grounded upon nature, and no nation was, that out of it took not their grounds; and nature being the same in all, the beginning of all laws must be the same." (Selden's note to Fortescue, De Laud. Leg. Angliæ, chap. xviii. note g, p. 33, 2d ed., 1741.) And what is this nature? The imprint of all created things stamped upon them by their Creator; the vital principle of life he laid down as the foundation of their essence and being. "Laws," says Harrington, in his Political Aphorisms, "are founded in nature. Nature is God."[1] "In the name of God," are the words with which the compact, made on board the May Flower, November 11, 1620, begins. (Charters and Laws of the Colony of New Plymouth, Boston, Mass., 1836, p. 19.) To follow nature, thus understood, is the *deum sequi* of Seneca.

7. The state always remains a means, yet it is the most indispensable means to obtain the highest end, that man be truly man. The *salus populi*, not the *salus civitatis*, is the *suprema lex*. The state exists to obtain or maintain the weal of the people; but we must beware not to give a mean sig-

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[1] "Item author justitiæ est deus, secundum quod justitia est in creatore." Bracton, de Leg. et Consuet. Angliæ, lib. i. c. 3.

nification, perhaps mere physical well-being, to this term of common weal, or *salus populi.*

On the one hand, the individual stands incalculably higher than the state; for that he may be able to be all that he ought to be, the state exists, and each individual has that over which the state can never extend, because it cannot be drawn into jural relations, and because it will outlive the state—the soul. "Over the soul can and will God allow no one to rule but himself alone," says Luther,[1] who had no extensive views of individual civil liberty beyond what touched the religious liberties, nor could it well be expected of him.

On the other hand, the state stands incalculably above the individual, is worthy of every sacrifice, of life and goods, of wife and children, for it is the society of societies, the sacred union by which the Creator leads man to civilization, the bond, the pacifier, the humanizer, of men, the protector of all undertakings in which and through which the individual has received its character, and which is the staff and shield of society. Not that I am guilty of the egregious folly of believing that everything in the state is good, that the authorities established by the state may not sanction unwise, bad, wicked things. "Jam vero stultissimum illud existimare omnia justa esse, quæ sita sunt in populorum institutis aut legibus" (Cic., de Leg., i. 13); but the state, as the chiefest of human unions, is a sacred institution, and deserves each man's faithful devotion, to serve where it is right, to improve where wrong.

8. The state existing of necessity, and it being each man's natural society, it follows that each member singly owes some duties to each member collectively, and, of course, all members collectively have certain rights (and, consequently, duties) towards each man singly. Again, that as the individual stands higher than the state, he is free to leave it. And perhaps it may be as well observed here as in any other place, that emigration does not necessarily imply want of patriotism. Patriotism not unfrequently causes us to emigrate. What nation

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[1] Luther on the Duties of the Subject to his Magistrates.

loved more ardently their native soil and state than the Greeks? What nation, at the same time, was ever more given to emigration than the Greeks? They lighted indeed the sacred lamps which they took with them in the temple of their mother city; still, they emigrated. The Mahometans have compasses made which point to Mecca (of course, with reference to one country only); there are many emigrants whose hearts resemble these compasses, and you would be uncharitable indeed were you to charge every emigrant, because he emigrates, with want of patriotism. On the other hand, as the state is infinitely above the individual, we measure not our attachment by a daily account and balance of profit and loss. The state is a society for weal and woe. "Cum bonis omnibus coire non modo salutis verum etiam periculi societatem." Cic., pro C. Rabir., 7.

9. The state does not *make* right;[1] it protects original rights, and, of course, in so doing, modifies their mutual operation, and in order to protect them the state must publicly acknowledge, sanction them, limit them, or confer privileges. It is with right very much as with value. The agents of the state may place a stamp on precious metals, and make *coin*, but the state cannot make *value*. (See M'Culloch on Commerce, and others.) So did the council, convened by Pope Julius II. to oppose the one assembled at Pisa, declare the necessity of the belief in the immortality of the soul. Startling as this procedure may be to us, on account of the state of things it reveals, still no one believes that the assembled prelates meant to make the soul immortal; all they could mean was to declare the belief of the church.[2] The French

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[1] This the state would undoubtedly do, if we adopt the view of some earlier writers, *e.g.* Rutherforth's, according to whom (book ii. ch. 1) right is nothing but lawfulness, that which the law permits. If so, a man can have no right except what the law sanctions; and yet by far the fewest nations have positively enacted the principle that a man can do everything that is not prohibited, although nearly all acknowledge the principle. Where, then, does this right come from? Where does this right of the lawmaker himself come from?

[2] Raynald, § 1.

Convention went, and was perhaps obliged to go, still farther. They decreed their belief in a supreme being.

XXXIV. We have arrived, then, at the following important truths:

1. The state exists of necessity, and is the natural state of man.
2. The state is a jural society.
3. The state is a society of moral beings.
4. The state does not absorb individuality, but exists for the better obtaining of the true ends of each individual, and of society collectively.
5. The state, being a human society, jurally considered and organized, is the society of societies; a bond for weal and woe.
6. The state does not make right, but is founded upon it.
7. The state is aboriginal with man; it is no voluntary association; no contrivance of art, or invention of suffering; no company of shareholders; no machine, no work of contract by individuals who lived previously out of it; no necessary evil, no ill of humanity which will be cured in time and by civilization; no accidental thing, no institution above and separate from society; no instrument for one or a few; no effect of coercion, or force of the powerful over the weak; no mystery founded on something beyond comprehension, or on an extra-human base; the state is a form and faculty of mankind to lead the species towards greater perfection—it is the glory of man.[1]

XXXV. When it is asserted that the state exists of necessity, and is the natural state of man, it is not pretended that the idea of the state, such as I have represented it, has existed and been clearly acknowledged from the beginning. The history of the state is similar to that of all other ties and institutions founded in man's nature, and of which I have said already that their character becomes more distinctly developed on their own essential ground, and that their operation consequently becomes more powerful with every advanced stage of civilization, which in other words only means, with every farther development of man's true nature. No states are so powerful in their action, within and without, as those of civilized nations. It is the same with property, marriage, the family, division of labor, exchange, intellectual intercourse, protection of person, public opinion. Nothing is more natural to man than some sort of administration of justice; it begins with the father in the family, and man cannot possibly live without it. Yet every progress in civilization secures it more and more, notwithstanding the diminution of accompanying physical force to the contrary. How weak and fragile are the theoretically absolute governments of the East! and where is the state more powerful than in England? Where has it greater resources, where does every individual feel himself more identified with it, or rush more readily to its assistance when in danger? A single battle may put an end to a whole vast absolute empire; but a civilized empire, with a government founded on civil liberty, may lose ten battles, and still it exists. I do not, of course, mean by state the government, and by government the executive—a very common confusion of ideas. I do not mean that with every progress of civilization the numerical strength of the standing army is increased, though this too has often been believed to constitute the strength and sinew of states;[1] or that the executive becomes more absolute; I mean something far higher. I mean that the essential attributes of the state become more distinctly understood, affect more powerfully each individual, unite men into a more closely interlinked community, that it extends protection and receives stronger support, that vast, powerful public opinion joins it—in short, that the intensity of its action in a thousand different ways increases. Mr. Elphinstone, in the quoted work, page 338, says, "None of all these (Afghanistan) chiefs have authority equal to that of a constable in England." Yet theoretically their power is, in the main, in conformity to Asiatic notions of the authority of rulers.

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[1] Dahlmann, Politics, reduced to the basis and standard of Given Circumstances, vol. i., Göttingen, 1835, in German. Mr. Dahlmann is one of the Göttingen professors who honorably protested against the abolition of the Hanoverian constitution by King Ernest (duke of Cumberland), and, in consequence, lost their respective chairs.

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[1] Even Algernon Sidney could say, "that is the best government which provides best for war." Discourses, chap. ii. sect. 23.

This progress is but slow; sometimes even fearfully retrograde movements take place. Ideas which we now cannot help connecting with the state, attributes which appear to us extremely simple, were not always clearly before the mind of the people. Thus, much time was requisite to distinguish between bare temporary expediency and true right and morality. We are informed that with the ancient Egyptians those who intended to follow the profession of theft gave their names to the chief of the robbers. By this custom a person who had been robbed could always obtain his stolen goods after paying a quarter of their value, which was considered much better than to expect protection from the laws alone and lose the whole. Thieves who did not belong to the corporation were not suffered by the other incorporated rogues; and the chief of the robbers was probably paid by government, and was "a man of integrity and honor."[1] Whatever advantage we might expect from an arrangement of this sort or a similar compromise with crime itself, we could not, would not dare resort to it. The injury to moral feeling and to the very conception of the state in the citizens would be infinitely greater than the advantage of recovering stolen property. If we suppose that theft thus regulated would operate with us as it is represented to have done with the Egyptians, property, indeed, would thereby be better protected, but the general protection, the security in obtaining the highest ends of society, would be incalculably injured.

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[1] Manners and Customs of the Ancient Egyptians, including their Private Life, Government, Laws, Arts, Manufactures, Religion, and Early History, etc., by J. G. Wilkinson, 3 vols. 8vo, London, 1838.

XXXVI. If man, as was shown, arrived very early at the idea of property and could not live without it, he must equally soon have been led to the idea of the just. If every relation between the father and his child might be imagined as solely resting on authority, power, or affection, we cannot, at least, imagine two children of the same parents to exist long without giving necessary rise to the ideas of equality, of justice. Let one brother sit down upon a log, and the other claim the seat; the ideas, Why? it is not right; have I not as good a right as thou hast? must have struck the mind of the first. Yet the paternal authority in dealing out justice was still too much aided by the whole parental relation to allow man strictly to separate them. The father, the chief, the ruler, the priest, were united in one person; the various attributes had not yet developed themselves as distinct from one another. This state of things continued even for some time after families had already increased into tribes. The patriarch ruled over the whole. A state existed, indeed; for there was justice administered, and where justice is administered there are rights acknowledged, and where rights are acknowledged there is the state; but it was the state in its incipient stage. Gradually the characteristics of the family and the state, of that which is fair and that which is just, showed themselves with greater clearness;[1] though the development of the state was and continues to be affected by a variety of adventitious circumstances, like everything else connected with mankind. The tree in blossom or with the ripe fruits is in no less natural a state than in winter when deprived of all foliage, nor is the plant in an unnatural state when yet unfolded in the germ. Nowhere do we see man without the state in some stage of its development, and Aristotle is right in saying, man is by nature a political animal (φύσει πολιτικὸν ζῶον ἄνθρωπος). If part of the ties of the state are broken, the fragments will immediately unite again; and if men are thrown outside of the pale of a large society, they themselves must instantly again unite to obey some general rule, to have it insisted upon by some authority, to begin the state anew. The "regulators" in the farthest West, men who, for some reason or other, enjoy a degree of consideration, and take the law into their own hand, while the others tacitly or otherwise agree to it, form a remarkable instance of this inherent political nature of man.[1] Men cannot possibly exist without law. The mutinous sailors, after having dispatched their captain, must elect another and obey him; the pirates who break with human society and declare themselves out of its pale are bound to constitute forthwith a state of their own, that is, a society in which there are general rules, rules which will be enforced if not obeyed, rules on which the individual can insist if transgressed by another, because established for the jural relations among them, in order to maintain what they consider *right*, to *do justice*—a society in which there are superiors and inferiors, which acknowledges authority. The history of the buccaneers is in point. When all laws were defied in Germany, the Vehme Courts sprang up.[2] When the planters of the colony of New Haven met on the 4th of June, 1639, "for the establishment of such civil order as might be most pleasing unto God," the first question propounded was not whether a civil government was necessary in the opinion of the assembled and previously entirely disunited planters, but at once, according to the spirit of the age, "Whether the Scriptures do hold forth a perfect rule for the direction and government of all men in all duties, as well in the government of families and commonwealths as in matters of the church."[1] I do not know of a solitary instance in history when the question was asked, Is some sort of government or other necessary or not? except in some melancholy cases by frantic fanatics, who preached the advent of the millennium, on the one hand, or by the inquiring philosopher on the other, in order to prove its connection with all that is human in man.

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[1] The Areopagites had to declare guilt or innocence, or the amount of punishment with reference to the whole life of the accused. (Æsch. c. Tim., 113.) The English or American juryman, according to his oath, must decide upon the evidence as it shall be given, and according to nothing else.

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[1] They are mentioned by Mr. Audubon in his Biography of American Birds. An article of great interest with regard to this subject, on Pony Clubs among the Indians, is to be found in the National Gazette (Philadelphia) of October 21, 1833, copied from the New York American.

[2] Much light has been thrown upon this subject by some late publications of the documents of the Vehme processes in Germany. [See Von Schulte, Lehrb. d. Deutsch. Reichs- und Rechtsgesch., ed. 3, 1873, § 116, and the authors there cited; Sugenheim, Gesch. d. Deutsch. Volks, ii. 624–634.]

XXXVII. The members of the state do not stand to each other in the relation of members of one family, nor as mere individuals brought together for the sole purpose of protecting one another against bodily harm, nor for any temporary and selfish purpose. The state has far nobler objects to obtain, though these are included. Without peace, society cannot live, and protection against bodily harm is undoubtedly one of the first objects of the state. We have seen that man is destined to acquire and possess property, and that it forms one of the primary requisites of civilization. The state, therefore, has vigorously to protect it. But there are more important objects yet to be obtained in the course of civilization; and protection, as has been stated, includes more than the sole warding off of injury to my person or property. Ignorance and barbarity, for instance, are likewise to be warded off, not only for the indirect reason that, if not, they will produce insecurity, but on the positive ground that knowledge and education are necessary for man's civilization, and must be obtained by society jointly (*e.g.* by common school systems, universities), if they cannot be obtained by individual energy or voluntary association. The state has been compared to an insurance company, in which property forms the share each citizen holds. Sad indeed would be that state where this principle should be attempted to be acted out;—attempted, I say, for it would be absolutely impossible ever to carry it through. It was a view common towards the end of the last century, and is maintained by some to this day, yet it is, even as a mere simile, radically wrong. For how is it that the state legislates also over those who have no property, and that they have a right to ask not only protection, but all the benefits guaranteed by human society organized into a state, that is, human society acknowledging certain authorities as the pronouncers and executors of the law? How is it that no one has a right to withdraw from this insurance company and say, "I am my own insurer," in other words, "I renounce your protection, I can take better care of myself; give up, therefore, all claims you make on me; do not consider me any longer amenable to your laws"? According to this hollow theory, men possessed of such enormous property as the marquis of Westminster, the duke of Buccleugh, the Portlands and Bedfords, ought to have each a hundred votes at least in parliament. Whence, above all, do we derive the power of the state, which it undoubtedly has, and has always exercised, from time to time materially to interfere with property, to prune it, if the state exists only to protect it and has no higher aims? The supposition that the state exists by a voluntary contract is open to similar objections, though there is some truth in the latter theory, but none whatever in the former. The state is, in principle, no association, but a society.

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[1] The record of this very peculiar meeting is to be found in the Code of 1650, of Connecticut, etc., Hartford, 1825, p. 114, et seq. [and in the Records of the Colony and Plantation of New Haven, edited by C. J. Hoadly, State Librarian of Connecticut in 1857].

The comparison of the state to an insurance company is one of the innumerable instances of men grasping at similes when they are unable to find out or to present the principle of the thing itself, forgetting the danger of building arguments on those parts of the simile which do not fit, as well as on the others, to which they necessarily expose themselves. Similes and metaphors are most dangerous in arguments on religion, sciences, and politics. They are serviceable by way of illustration, to drive more forcibly the pointed wedge of argument into a stubborn block, but always misleading if we argue upon them. Theology and politics offer melancholy illustrations of these facts. Millions have died for similes. Years of debate are spent because people will not approach the naked principle, or cannot get rid of associations deeply wrought into the mind by a simile which we have heard from early childhood. Equally dangerous, if not more so, is personification, and after the abstract or collective idea has been personified, the reasoning upon it, as if the two were one thing. I shall revert to this subject when speaking of the People. May I merely add here that the words "it is supposed," of constant occurrence in English political law, ought to be discarded, because they are apt to lead to fallacies? Who can forget all the fearful arguments of the crown lawyers and judges under the Stuarts, founded upon the suppositions and political fictions of the English law? Politics are matter of reality, of right, and have nothing to do with suppositions. Blackstone is full of them; "the king is supposed to be *ubiquitous!*" after which we find arguments founded upon this assumption. The king may be supposed so, but he is not, nor can he be. All these fictions and inventions of apparent principles for facts, which we wish to justify, explain, or connect—for to this the fictions amount—savor strongly of the school philosophy at a stage when it was at once boldest and least worthy of imitation.

XXXVIII. How a theory like that of the state's being a large insurance company had its origin, may easily be explained. The most extravagant ideas of the origin as well as of the true character of the state had been started; the state, the government, and finally the individual at the head of the government, were partly, at times entirely, confounded. A monarch (Louis XIV.) had declared, *L'état, c'est moi* (*I* am the state); and though he was at the time but a boy, yet he pronounced it in the parliament of Paris, and of course must have been told so to do by his advisers. Nearly everywhere on the European continent did government act on the principle, whether avowed or not, that the monarch, with his army and civil officers, was the state; nearly everywhere was the odious interference principle, according to which government might interfere with all my affairs, however private, carried to most injurious length, and all the minor circles of the state, of the whole jural society, were so entirely deprived of a proper action of their own that a perfect absorption by the central and only power became the necessary consequence; nearly everywhere on the continent of Europe had the individual been so wholly merged in the state, such as its character then was imagined to be, that it was natural, in the course which the human mind takes, before a truer view could be obtained, that politics should pass first through the other extreme, by which the state is construed in a negative way, if I may express it thus, and according to which, as an author has said, all the state has to do is "to look out that my neighbor does not pick my pockets or box my ears." The foundation of the state lies too deeply in the human soul, in man's whole nature, to be explained simply by selfishness. It is no accidental mass of atoms; it is an organism. Observe a steamboat full of passengers, all collected for one purpose, to reach a certain point as soon as possible, all in the same condition, having paid their fare, and equally interested in the safety of the vessel. Besides these points, every passenger forms an isolated individual. Is this the picture of a state? What a society do they form! with what utter selfishness every one acts and struggles for himself! Is this a society? an organized thing, with life and energy, with moral elasticity, with power, which can rest on close union alone? with an elevating, a humanizing character? Are there no other considerations than those of the protection of property and life, which unite us into a state? Then how unwise to sacrifice either for liberty! Then how absurdly did the Athenians act, when the Persians offered to them to live peaceably under their government, but they preferred to abandon property, city, all, and to expose their lives on board their vessels in the battle at Salamis! Then let us celebrate the Thessalians, the Locrians and Bœotians, who willingly sent earth and water to the Persian monarch upon the call to submit, and blame the other Greeks, who, according to an account given by later authors, resolved to amerce in a tenth of their property the *medising* part of the race. Then we ought to consider all those most thrilling pages of Herodotus on the Persian wars as but a sad illustration of man's folly; and the cautious and well-weighing Heeren is but to be pitied if he says, with reference to that struggle, that whatever mean acts were mixed with the greatest, "yet in the whole compass of history we can find no series of events which deserves to be compared with the grand episode then exhibited; and with all the exaggerations of the orators and poets, the feeling of pride with which the Greeks reflected on their achievements was just and well founded. A small country had withstood the attack of half a continent; it had not only saved the most valuable possessions which were at stake—its liberty, its independence—but it felt strong enough to continue the contest, and did not lay down its arms till it was able to prescribe the conditions of peace." (Political History of Ancient Greece, transl., p. 126.)

CHAPTER V.

Legitimate Objects of the State.—Danger of intermeddling Legislation; Instances.—Primordial Rights and Claims.—Physical Life and Health.—Law of Necessity.—Personal Liberty.—Right of Individuality; no Absolute Obedience possible.—Right of Share in the Protection of the State.—Jural Reciprocity.—Right to be judged by Laws, and Laws only.—Right of Communion or Utterance.—Liberty of the Press.—Right of Morality.—Immoral Laws, no Laws.—Right of Honor, Reputation.—Family.—Religion, Creed, Worship.—Right of Property, Acquisition, Exchange.—Right of Emigration.—Inalienable Rights.—State cannot take Revenge; the Crown cannot feel Wrath.—Political Absurdity of speaking of King's Anger or Nation's Revenge as Political Body.

XXXIX. The truth with regard to what the state is, lies between two extremes. The one has been mentioned in the previous section; the other is expressed by Aristotle, namely, that the state exists before the individual; if we understand it in the way the ancients actually viewed the state. The state, according to them, was all and everything, the individual receiving his value from the state alone. The essential difference between what the ancients understood the state to be and what they considered the essence of liberty on the one hand, and the modern views on the other, will be more fully treated hereafter. Aristotle was right, if he meant to say that man cannot exist without the state, that the state is not an optional thing, or an artificial contrivance, but that it exists by necessity as an effect and consequence of our nature, as language is not conventionally made, but exists between men as a necessary consequence of their physical and intellectual nature, that the necessity of the state lies in every individual, and that every one, therefore, finds already a state, in whatever stage of development it may be. The right of society to legislate—that is, the right existing somewhere of prescribing general and imperative rules—has, I believe, never been doubted, any more than the right of breathing in the individual; both flow from the same source—necessity according to our nature. They are conditions of our existence as human beings. We might live as brutes without the institution of the state, but for our existence as human beings the state is a *conditio sine qua non;* and this absolute necessity constitutes the ground on which is founded what is called sovereignty, that is, the self-sufficient power, which derives its vital energy from no other, is founded by no superior authority, but imparts it and extends over everything that is requisite in order to obtain the object of the state; which man has to obtain in and by society, in as far as it is founded on jural relations, *i.e.* on right, on terms of justice, or mutual obligations. Yet be it mentioned thus early, sovereignty means something entirely different from absolute power, unbounded power.

XL. The state (or human society organized on and according to its jural relations) has for its legitimate objects all those things that are necessary or highly important for man, and which yet he—first, cannot obtain singly; secondly, ought not to obtain singly (because he exposes himself or his fellow-citizens by doing so to great danger, for instance, by redressing privately interferences with his rights); thirdly, will not do singly, because burdensome, disagreeable, etc., *e.g.* to keep roads in good order, or establish common schools). Thus, life is absolutely necessary for man, and if he cannot possibly obtain medical assistance, society is bound to furnish it. Public hospitals are not a mere matter of charity, they are a matter of right. That they may be abused, and easily abused, we know; we know, too, that their abuse interferes with some sacred interests of society, for instance, lively family interest. If the Greeks thought that the development of taste was essential to the whole development of man, and that individual means were insufficient to effect the necessary cultivation of the fine arts, the state was right in promoting them by public means. If the British people believe that the love of the fine arts has the twofold salutary effect of softening the manners, of humanizing and aiding in bringing out what is human within us, and of elevating taste and thereby raising the standard of comfort, which again is of essential importance to national industry, then parliament has a right to spend money for the improvement of the British Museum, and acts wisely in so doing, and the most scrupulous citizen must rejoice at the constantly increasing number of visitors of that interesting institution. That a museum ought not to be promoted at the expense of things more urgently important, is a matter of course. Political wisdom and honesty must decide in practice; and practice in political matters is attended with the same difficulties as in any other sphere, because in practice various interests clash, and we must choose between them. If society be convinced that institutions of deep learning, universities, are of absorbing importance to society, because science must always be far in advance of practice, and because the cultivation of the sciences for their own sake, and not with a confined view of immediate practical application, raises the standard of knowledge in general, and is a great blessing to a community, and if the state be convinced that private means must ever be insufficient for the erection of a university and the collection of large libraries, museums, etc., or if experience have shown that private exertion will not be directed to the foundation of a university, then the state has precisely the same right and the same obligation to found a university as it has to aid in the foundation of common schools, or hospitals, courts, pilots, or armies.

Everything in the state must be founded on justice, and justice rests on generality and equality. The state, therefore, has no right to promote the private interests of one and not of the other. It promotes my interests if it assists me in getting my debts paid, but it must do the same for all others. It promotes private interest if it gives a pension to the widow of a soldier, but it is done on the ground that society owes her a debt, or that it is good for society thus to encourage soldiers. If the state gives money to a traveller into distant regions, or to study the arts in Rome, it does this because the public is believed to benefit by it, directly or indirectly, but the money is not given to the private individual as such. Though public gifts of this nature, pensions and the like, have frequently been bestowed in a shameless manner upon Somersets and Buckinghams, it was generally at least pretended that it was done for some public good, to reward loyalty, surround the throne with splendor, etc. The riches publicly lavished by a Louis XV. or Charles II. upon dishonorable characters make an exception; so does their age. I do not know that what is lawful for the state to do, and how it ought to be done, has ever been more lucidly expressed than in the following passage of Isidorus of Seville (Orig., lib. v. c. 22), in which the pleonasms are more apparent than real: "Erit lex honesta, justa, possibilis, secundum naturam, secundum consuetudinem patriæ, loco temporique conveniens, necessaria, utilis, manifesta quoque, ne aliquid per obscuritatem in captione contineat, nullo privato commodo sed pro communi utilitate civium scripta."

XLI. It is evident that, according to the principles laid down, there is no theoretical difficulty respecting the subjects which require the action of the state or not, and those which the state ought never to touch. But in practice there is much difficulty, because it is not easy to decide what is of sufficient general interest to allow of, and what of sufficient general importance to call for, public action. The choice of the subjects with which the state ought to interfere must essentially depend upon the state of civilization of the society, and the difference, as to knowledge, between the authorities of the state and the ruled. The general principle undoubtedly is, interfere as little as possible with the private affairs of the individual. This is clear from the object of the state. The intermeddling of the state with private affairs is unjust, burdensome, and dangerous, requires enormous sums, and frequently springs from other motives than a wish to be useful to those whose affairs are intermeddled with. If society have a fair start in civilization, no principle can be sounder than to leave as much to private exertion as the public weal, comfort, and morality allow. Individual industry, private combination, and associations, which are conscious that they depend upon themselves alone, are possessed of a vigor, keenness, and detailed industry that cannot be expected of the action of the state if applied to industry or other exertions partly connected with industry. The American packets to Liverpool and Havre ply more swiftly than, or at least as swiftly as, any government packet; but it must not be forgotten that this requires a general free action. Nothing is more common than that single branches are badly conducted by the people in countries in which government has in general annihilated the independent exertion and native individual vigor. A similar principle applies to the affairs of government matters themselves, as will be seen in the sequel. On the other hand, the state, that is, its public authorities have frequently means of obtaining correcter, wider views, ampler and more detailed knowledge, in short, official information unattainable by the individual, and can command the aid of better qualified persons, so that interfering becomes just, because demanded by public interest. Experience alone shows in practice which is the true limit and mean, provided only that the first principles of the state, of right, are always kept in view. The task of a Peter the Great of Russia, to unite and raise a barbarous nation, is very different from the problem to be solved in a country like England. Nothing can be more preposterous than a police interference with the cooking of the people; yet in times of a devastating plague no community would hesitate to interfere with the choice of food, if such a measure were considered essential to public health. In general, it may be said that views respecting this subject are fast becoming more correct. During the latter part of the last century and the beginning of the present, the more active governments on the continent of Europe carried the intermeddling principle to such an extent that no affair, however private, seemed to be considered as not belonging to police inspection. It has been found, however, even where the people did not insist upon the contrary, that this course leads to most calamitous and useless results. Yet this mistaken notion of the duties or rights of the state is met with also in earlier periods than the one mentioned.[1] It is necessary to have seen nations who have been forced for centuries to submit to constant and minute police interference, in order to have any conception of the degree to which manly action, self-dependence, resoluteness, and inventiveness of proper means can be eradicated from a whole community. On this account, systematic interference weakens governments, instead of strengthening them; for in times of danger, when popular energy is necessary, when "every man must do his duty," or the state is lost, men, having forgotten how to act, look listlessly to the government, not to themselves. The victories of Napoleon over the many states east and south of France were in a great measure owing to this natural course of things.

XLII. From the elementary truths which have been found, we shall be enabled to draw conclusions of momentous importance both with regard to the individual members of the state, and to the state collectively. These truths have been more distinctly developed in the course of civilization; the more essential their importance, the more steadily and distinctly have they gradually unfolded themselves, and are consequently to be regarded as natural to man and the state. The following remarks will contain some amplifications of what has been stated in sect. xxxiv. and previous sections.

The writers on natural law speak of several original rights; that is, rights which I possess as a human being, *quatenus homo sum*, and which are contradistinguished to *acquired* rights. The former are likewise called personal rights, because inherent in every individual, *i.e.* human individual. Properly, there is but one original or primordial right, that of my personality, the right I have expressed already by way of axiom: "I am a man, *therefore* I have a right to be a man." By my existence I prove my imprescriptible right to my existence as man, physical, intellectual, moral—my right that humanity in me be not annihilated, and, inasmuch as freedom of action constitutes one of the chief ingredients of humanity, that I be allowed to do all that does not interfere with the same right in others.

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[1] Christian II. of Denmark, who lived in the beginning of the sixteenth century, prescribed, by heavy penalty, not only how the street and entry of houses ought to be swept, but when and how benches and tables in the houses were to be scoured. Raumer's History of Europe since the Fifteenth Century, vol. ii. p. 114, where the proper authorities are given.

The truths we have so far ascertained are:

Men are individuals, and must forever remain such.

Men are moral beings, each one for himself.

Men must live in society.

Men, as free agents, become, in contact with others, jural beings (beings who have rights towards others, and towards whom others have rights, that is, who have obligations).

The state is a jural society.

From these positions we derive the following conclusions:

1. The physical life of the individual is the first of all conditions of my existence as man. The state, therefore, cannot take it for the benefit of others, because it would violate the first of my rights,—that of living,—without being able to give me an equivalent, unless the state have acquired a right over my life on the specific ground of my having forfeited it.[1]

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[1] The question of capital punishment cannot be developed here; it may suffice to say that, according to the true principles of the punitory power in the state—see Lieber's Letter to the President of the Philadelphia Prison Society on Subjects of Penal Law, Phila., 1838—no doubt can be entertained as to the abstract

The Spartans murdered at times the helots. "They kill of the helots as many as is necessary."[1] The extrajudicial killing of a person may become absolutely necessary in a specific case of self-preservation, as, for instance, it seems to have been necessary on board the wrecked French vessel Medusa, which I shall have to mention hereafter; but when a state institution regularly requires this, it shows thereby alone that it ceases to be the state, the protecting society, and, of course, that all mutual obligations are at an end. The majority have not the right to kill the minority, as happened in the case of the "Corcyrean Sedition," related by Thucydides, for to this amounts in my opinion that massacre—a prototype to the massacre of St. Bartholomew. Richelieu, who will be allowed to have possessed high notions of the king's power, said, "The king is not master of life and death, and cannot command duels to be fought." (Richelieu, Mémoires, iii. 41; Political Testament, i. 190.)

Closely connected with this right is the claim of protection for my body, limbs, and health. Many considerations of high importance must give way if clashing with the sanitary interests of the members of the community. Every other right is to give way if life and health are in question, and so high has it been considered by the civil law, that to save my life, if under absolute necessity, every right of others may be disregarded (*jus necessitatis; necessitas non habet legem*). If a

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right in the state to punish capitally for certain crimes. The question only can turn upon these points: is it requisite or expedient, will its continuance in the penal code aid in punishing crime or protect against it, and can man establish a mode of ascertaining the truth, *i.e.* of trial, on which he may so far depend as to take away, upon its result, the life of another and to cut off, on the discovery of a wrong verdict, not only the possibility of restoring him to his former condition, but that also of acknowledging to him his error and arresting his punishment? This then would lead to an inquiry into the various modes of penal trials and their actual operation. It belongs likewise to the question of expediency whether the punishment substituted for death can, according to existing circumstances ever more powerful than professions and wishes, be faithfully maintained.

[1] Heraclides Pont., Fragm., ed. C. Müller, Frag. Hist. Gr., ii. p. 310. Compare Plutarch, Lycurgus, c. 28, and also Thucyd., iv. 80.

man be in actual and palpable danger of starvation, he may make use of the property of any one else. Necessity, as it is expressed, does not establish a right, but annihilates accountability. (See C. A. Tittmann, Manual of the Science of Penal Law, in German, vol. i. § 89.) The English common law does not acknowledge absolute necessity as a ground of non-accountability, except in cases of self-defence, though the rectifying principle in the institution of the jury would not allow a man to be punished for having eaten what did not belong to him, in a case of starvation.

XLIII. 2. My personal liberty is a condition of my free agency as a member of society—is an ingredient of my humanity. The prisoner may be free in mind, freer than any one not in chains. Who was the freer of the two, the old, mild Barneveldt in prison, sentenced to death, and yet incapable of saying one word by way of petitioning for pardon, because he would not become a hypocrite and outwardly acknowledge guilt, even in the slightest degree, or Maurice of Nassau, who insisted upon it, and had him executed? Yet, as a being who has to obtain certain objects in this world and in society with others, I must be personally free. The state cannot circumscribe my personal liberty in any way, unless I have forfeited it.[1] The state exists to protect it, not to interfere with it.

XLIV. 3. The fact that man cannot by possibility divest himself of his individuality and moral character shows that the state cannot absorb the individual, since the state remains forever a society, that is, a union of individuals: hence—

a. Absolute obedience of any one to any other person is impossible; for it would absorb individuality and annihilate the moral character, that is, individual moral value (requiring free agency) and responsibility. More of this under the head of Obedience to the Laws.

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[1] Respecting imprisonment, and how the state is bound to protect even the convict, see the above-quoted Letter to the President of the Philadelphia Prison Society.

b. Absolute power, either in society collectively or any individual, is inadmissible; for absolute power presupposes (is only the antithesis to) absolute obedience. Nor can an individual, clothed with whatever authority, cease thereby to be a moral individual, with all his rights and responsibilities. The individual personating the crown cannot possibly divest himself of individuality, and consequently remains in a jural relation to other individuals. If a monarch shoots his subjects for pleasure—and these cases have happened—does he do it as monarch, or has the individual no right to protect himself and repel the aggressor or render him offenceless? This subject will occupy us more under the head of Sovereignty. Suffice it here to say, the monarch cannot cease to be an individual and as such to stand in jural relations to other individuals. Nor has ever any other view been taken in practice; for whenever a monarch came to be considered a common invader of primordial right—a general nuisance—the people have made him innoxious.

XLV. 4. Since I am an individual with a moral character, and stand therefore in jural relations to other beings of the same class, it is clear that reciprocity exists between us, for all right, in its very meaning, involves reciprocity. It cannot be right without this. The state, founded on these relations, has the same character, or, in other words, there are jural relations between me individually and the state collectively, there is the relation of reciprocity between the two. The moment that any particular state were actually to treat me as merely existing for it, demanding only and giving nothing, or demanding without giving the equivalent, that moment the bond is dissolved and the state does not any longer exist for me—it is not my state.

I believe it is this idea which forms the pith of Chief-Justice Markham's remark to Edward IV., that "the king cannot arrest a man upon suspicion of felony or treason, as any of his subjects may; because if he should wrong a man by such arrest, he can have no remedy against him."[1]

XLVI. 5. My standing in jural relations to the state, my obligations, rights, and penalties, must be expressed and judged of by laws, for laws are the organs of the state. Rights imply that he who has them can insist upon them; he ought to have the power, or some one else for him, to enforce them. Hence they cannot depend upon personal views and feelings and affections; they must be clearly defined, must not lie in an indefinite state in the breast of some one; or, as in German terminology it would be properly expressed, rights are objective, not subjective. The connection of the individual with the state, then, his obligations and responsibilities, are to be judged by laws. Each member of the state has a right to be judged by laws. It is not always possible that laws be absolutely or mathematically definite; it cannot be (see Political Hermeneutics). An officer is sentenced for "ungentlemanlike behavior," and justly; but what is gentlemanlike behavior? Still, he is judged by laws. He who demands unlawful things, be he who he may, does it as a private individual, at his own peril, for the state has no other means of speaking but through the law or lawful authority, *i.e.* authority keeping within the law; all beyond it is private. "When the 'commissioners' used to send pursuivants to ransack houses, and an individual defended his rights by killing the officer who attempted to enter his house by virtue of a warrant from the commissioners, the ordinary judges declared that he was not liable to prosecution, and dismissed him from the bar." (Simpson's Case, before the judges of assize in Northamptonshire, 42d Eliz., 4th Inst., 332. See, for more authorities, Brodie, i. p. 198. See also Hallam, Const. Hist. of England, vol. i. p. 527, et seq.) It was no excuse for Strafford, or the ministers of Charles X. of France, for their illegal acts, that the king personally had ordered it thus. So far is this true principle carried, that an individual, upon whom a constable officially called in the street to assist him in the arrest of a person, was held answerable when it was found that the constable had no right to make the arrest. It lately happened in the city of New York. Sacred as the principle is, the application of it in this particular case exacts an impossibility. For a citizen cannot, when thus called upon, ascertain whether the constable is performing a lawful act. But a law ought to be *possible;* it is one of its very first requisites.

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[1] Quoted in Hallam, Constitutional History of England, vol. i. p. 526.

XLVII. 6. Man cannot be man without communion or utterance, be this by sound or sign, and be this sign transitory (as the sign made by the deaf and dumb) or enduring (by writing). We cannot exist physically, intellectually, and morally, without utterance; our whole existence as human beings depends upon it. We cannot imagine a human society consisting of beings deaf, dumb, and blind, as the one of whom Mr. Stuart, the British philosopher, gave an account, and as there is now one in the institution for the blind at Hartford, Connecticut (named Julia Brace). Mankind could never have advanced, had not the members of the existing generations held free converse among themselves, and had not, in the course of time, one generation learned to commune with the next, or people separated by space learned to exchange their ideas. The more the earth became peopled, the more the stage of action, knowledge, and intercourse became extended, and the more the collection of facts and reasoning upon them required communications too extensive for mere oral converse, the more writing became necessary, and the more knowledge of what has been written became indispensable. Still, writing is nothing but utterance and converse, although of the utmost importance to mankind, because without it man could never have shaken off the thraldom of distorting tradition; knowledge could not have accumulated in any high degree, it could not have descended by way of inheritance from one to the other. Interfering with writing, therefore, is interfering with thought, and, according to a German homely but significant proverb, "thoughts are duty-free.' Utterance is nothing more than the manifestation of thought or feeling. And is the mind not absolutely free of the state? Where is the jural relation in which it stands to others, without which the state cannot touch it? Hence the inadmissibility of any authority interfering with scientific and religious utterances, if no right of others is infringed. The state must not interfere with thought. No authority, man, or body has a right to disturb my communion with my fellow-men, by whatever means of utterance I choose. To establish censorship amounts to nothing less than to ordain that no man shall leave his house, or give to any one to eat, or offer anything for exchange, if he has not previously obtained permission to do so on proving that he has no criminal intention. Censorship disturbs me most essentially in my jural relations and the first foundation of them, namely, that I must be allowed to do what harms no one, and be interfered with only when I do harm. Locomotion is certainly a primordial right, without which mankind could not exist; yet if I, for one, were forced to choose between locomotion and converse, I would prefer the latter, for I might contrive to live penned up in a room more easily than without free communion with other minds. The state has no right either to interfere with what I shall read (for instance, by establishing authorities on the frontiers to inspect all imported books, whether they are fit to enter or not, as is the case on the Austrian frontier), or with what I shall say by way of writing to others; but it has the bounden duty to protect this my primordial right, and wait till I abuse it, as it does not tie my arms, to prevent theft or murder, but waits until the use of these limbs has been abused. Liberty of the press is in principle as proper or improper a term as liberty of breathing, talking, walking, thinking, working, would be, and its being guaranteed in the fundamental laws of nations is explainable only by the continued efforts of power to restrain it, which are more frequently successful because they do not interfere with the physical interest of man, nor directly with the great number; yet it is of equally essential importance, because man is man by his intellect more than by his body, and it affects equally, though not so directly, the welfare of the whole man. All nations, therefore, advanced in civil liberty, have returned to it; it is a *return*, and not the establishing of a new thing, as has been shown, for the interference with it is an abridgment of the right of communion.

It is not said that utterance, though necessary for me in my character as man, may not be regulated or suspended. Though I have as man the indisputable right of utterance which no power on earth has a right to wrest from me, any more than to cut off my arms, yet I have not the right to use it everywhere and on all occasions. So does my right of locomotion not entitle me to go where I choose, into my neighbor's field, closet, etc. I am not allowed to speak loud in a church, in a deliberative assembly. When the Dutch Colonel Haraugière, in 1590, hid himself with his seventy men on board the peat-vessel, to be dragged into the fortress of Breda, occupied by the Spaniards, he had a right to declare that a single word uttered should be instantly punished with death. The same order, if I remember right, is said to have been given by General Wayne when he marched to capture Stony Point. It is done not unfrequently. So may utterance by writing be suspended or limited; for instance, who would deny the commandant of a besieged fortress this right, if he was afraid of a mutinous spirit? The same may take place in a rebellious province, and under certain circumstances in a whole country during a time of war. But all these are exceptions, as by way of exception the police may examine my rooms, whether I ventilate them properly, for instance, in times of a general infection.

XLVIII. 7. As my intellect has its primordial right, so has my moral character. The state has to protect virtue: hence all immoral laws are *ipso facto* invalid, be they customary or not; the state or any authority cannot require an immoral act or permit a crime; and each one has a right to protect his morality. And if it had been the custom of centuries for feudal lords to claim the *jus primæ noctis* (and what unrighteousness has not been termed at times a *right?*) or *marchetta mulierum*, any bride, or her father, brother, or husband for her, had the undoubted right to defend her virtue even at the risk of the life of the offender. Man's virtue is his very self, and the state is there to protect it, all customs, laws and statutes, commands and injunctions, however old or from whatever authority or however long acquiesced in, to the contrary; for the primordial rights reappear with each human being *qua* man alone, and not by way of charter, grant, or specific relation to the state, in all their native power and importance. It may not be expedient at times to insist on them. A husband whose bride was thus claimed might think that resistance would inevitably lead to his death and a consequent still greater exposure of his bride. This is for him to calculate; I speak of right only.[1] (See the highly immoral laws in Blount's Fragmenta Antiquitatis, or Antient Tenures of Land, new edition, by Joseph Beckwith, York, 1784, page 124, and other passages.) Philip II. could not rightfully authorize any person to murder the Prince of Orange, nor could Charles II. authorize the assassination of Cromwell. No king can order any person to murder another, as Philip ordered Perez to murder Escovedo without process, on account of weighty reasons respecting himself (the king) and the crown, and well-proved facts. Napoleon could not order courts-martial to find persons guilty, as he has been charged with doing.

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[1] * The following interesting case is copied from Roberts, Life of the Duke of Monmouth, ii. 88, who copies from Chilton Priory: "While Lord Feversham was entertaining himself with executing the prisoners [after the battle of Sedgemoor],—for instance, turning so many off at each health,— some officers went to Weston. One entered the family house of the Bridges and offered the grossest insult to the lady of the house in the presence of her family. Her daughter Mary, between eleven and twelve years old, drew the officer's sword and stabbed him dead. Mary was tried by a court-martial ordered by Colonel Kirke,—a monster himself,—and was not only acquitted, but received the sword, with the injunction that it should descend to the Mary Bridgeses in the family. It is still in existence, now owned by Mary Bridges of Bishop's Hill," etc.

XLIX. 8 As a moral being, obliged by nature to live in society, every one has a right of honor or reputation, that is, the acknowledgment of his worth as a man and citizen must be protected, for upon it his existence, and whole relation to society, to which he has a primordial claim, depend. The worth of an individual may be strictly moral (as man), political (as citizen), or consist in his capacity or in his general fitness for social intercourse. The state therefore has the duty, because each one has a natural claim to it, to protect the acknowledgment of each one's human and civil worth by the omission of all actions which may convey the declaration that the individual in question is unworthy of esteem as a man or citizen. (Feuerbach, Manual of Penal Law, § 271.) As, however, free utterance is an equally important right, and as society and consequently each individual has the greatest interest in free discussion, without which no advance in civilization is possible, it is exceedingly difficult to ascertain the precise limits between the two, and various nations have of course differed very materially upon this point. The following are some general rules: *a.* The less a charge against the honor or reputation of an individual carries with it the possible remedy, the more does the individual stand in need of protection against it. All slander belongs to this class, because it is against the private character of a person, and it lies in the nature of things that publicity cannot prove the contrary. A woman's chastity is her honor; attacks against it imperatively require protection; but if the opposition charge a minister with selfish, even traitorous, designs, in these general terms, he may leave it safely to the publicity of his actions to prove the contrary. *b.* If the state takes away the means by which otherwise an individual would repel charges against his honor, it is the more bound to protect: for instance, it ought to punish the utterance of such epithets as are considered dishonorable by the society, called *injuria* in the European continental law. The English law acknowledges this necessity but in a very limited degree. The Roman law distinctly protects the civil honor or dignity as such. The jurist Callistratus defines the *existimatio* as being *status illæsæ dignitatis, legibus ac moribus comprobatus.* (Theodore Marezoll on Civil Honor, in the German, Giessen, 1824.) *c.* The more an attack upon a man is directed against his capacity, skill, or performance of duty as the means of maintaining himself or acquiring property, the more it requires the action of the state. This is perhaps chiefly on the ground that the state shall protect my property and myself in the process of acquiring it. Yet the previous rule holds, that if the charge carries its possible remedy with it, it does not so much, if at all, require public action. If a person charges a physician with being a quack, it is a serious attack; but if a reviewer says that a physician, in the reviewed book, has shown himself a quack, and gives the facts by which he thinks to support his charge, the same necessity does not exist. A professor of a university depends for support upon his capacity; but if a person says he knows no more than his freshmen, he has ample means of proving the contrary. *d.* The more definite the charge, and the more it implies a crime or gross immorality, the more it requires to be repressed. It is a very serious charge against a whole cabinet of the English crown that all the members are "shabby, silly, truckling, and fomenting revolt," as thousands of times the Melbourne administration were called: but what is "shabby, silly?" As to fomenting revolt, their conduct is public, let them abide by it. But when Mr. O'Connell publicly charged the Tory committees of the commons with "foul perjury," they were right to take up the matter, if they felt a clear conscience. Had he stated at once why he charged them so, the case would not have been so urgent, according to the rule given as the first.[1] *e.* Charges which interfere with the right of free social intercourse require public action. If a person say of another that he is afflicted with a malady which renders him unfit for contact, it is doubtless most serious slander.

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[1] See, however, Mr. O'Connell's speech, after having been reprimanded by the Speaker, according to a vote of the house, on February 28, 1838.

L. 9. We have seen how important an element of all that is human the family is, and a man has a right to be protected and not interfered with in his sacred family relations. Who is destined by nature to be the protector, cherisher, and fostering guardian over the body, mind, and virtue of children, if not the parents? A Greek merchant told me, during my sojourn in Greece, that Ali Pacha, of Janina, sent once for his daughter, "because he had seen her on a ride, and she had pleased him,"—of course that she was to be installed in his seraglio, and, as was the custom, to be married after some years to one of his menials. The father would have had the undoubted right to defend his daughter in any way whatsoever; the question could only be as to expediency. If the authorities forcibly carry away children from their parents to educate them in some specific religion, and on no ground of unfitness of the parents for their important task, they have the right to defend their offspring by any means whatsoever, though they may abstain from using it, in order not to expose the life of the children, or their own, as necessary for the support of their children.

LI. 10. Theodoric writes to the Roman senate, "religionem imperare non possumus, quia nemo cogitur ut credat invitus." If religion means all that appertains to man's relation to God, it is evident that as it is not an individual relation to any other human individual, it cannot, in its very essence, ever become a matter of the state, because the state has to do with jural relations only, and these must exist between man and man; there is no other relation of right imaginable. (Property, a relation between an individual and a thing, becomes a matter of right, a jural relation only, inasmuch as others are excluded from that property; it signifies therefore again a relation between two individuals.) The state cannot, even were it to try, seize upon religion. Properly speaking, therefore, liberty of conscience has no meaning; the state cannot reach it. We might as well say liberty of taste. How can the state reach my taste? Unfortunately, however, the term has acquired but too definite a meaning. Facts and outward actions are the only things for which the state has an organ; how, then, can it approach the thoughts and feelings? Hallam (note to page 308, vol. i.) speaks of the "false and mischievous position of Hooker," whom, however, he justly values for his writings, "that the church and commonwealth are but different denominations of the same society."

It is otherwise with the publicly professed creeds, modes of worship, and churches, that is, religious societies of the same doctrine, discipline, and government. These are tangible by the state; they can claim protection if innocuous, or may be interfered with if they interfere with the jural relations of others—for instance, if they should palpably promote immorality. If the English thought it right to acknowledge Elizabeth as their queen, they were right to enact laws against public Roman Catholic worship and the public profession of its creed; not because it was Roman Catholic religion—it is detestable and criminal for the state to interfere with religion as religion—but on strictly civil grounds; because the pope had excommunicated the queen, had called upon the Catholic princes to conquer her lands, and had absolved the English from their allegiance; because the Catholics were known to acknowledge him as their spiritual chief and consider Mary Stuart as lawful queen of England; because it was the age when assassinations on religious grounds were extolled, the murderers of Orange, Henry III., and Henry IV. were praised and publicly compared to characters of the Old Testament; because fearful slaughters had been perpetrated, and a renewed and most vigorous reaction in favor of Catholicism had taken place all over Europe. (See, for the last remark, Ranke's excellent work, The Popes, their Church and State, books v., vi., vii.) I do not say by any means that the laws were good in detail, nor can we justify persecution for Catholicism, for this implies that it is for religion and not for infringed rights. It was wrong, therefore, to put men on their oaths in order to find out whether they were or were not Catholics, because merely believing one dogma or the other is not a thing tangible by the state.

The principle which the Catholics, and, after them, some early Protestants, have professed, that the church has nothing to do with the heretic except to excommunicate him, and to hand him over to the secular authority, which may punish him if it chooses, was right on the side of the church. But if so, whence does the secular authority derive the right to punish the heretic *qua* heretic? As such he has been already excommunicated. We all know how hypocritically this principle was acted out! History weeps over the slaughtered millions, the vast multitudes of homeless exiles, which she has had to record against Catholic and Protestant. Whenever the state has felt itself obliged, and has had the power, to act upon religion (and not on worship, or church matters, in as far as they can become matters of jural relations), misery has been the consequence. Philip II. and the people of Spain in general always considered the crown of Spain as not purely political, but as possessing a strong religious element. He was the propagator of Catholic faith in foreign regions, its support or the extirpator of heresy in Europe; and what has been the consequence? The Netherlands were drenched with blood for years and years; murder and rapine ruled; Spain, where many were inclined towards Protestantism,[1] was crippled in all her energy, mental and industrial, by the Inquisition, which degraded a noble nation to such depth that it seems it can be roused but by one solitary agent, religious fanaticism; with its population diminished, frankness of character gone, energy enervated, knowledge oppressed, morality lowered, and the nation unfitted, from mere exhaustion, not from tumultuous ebullitions of strength, to settle into peace; her colonies, like the mother country, without character or energy, knowledge or manliness, turning in weakness from one change to another. It was a melancholy time indeed! Everything seemed to turn upon religion; everywhere were dogmas taken for religion; everywhere busy hatred and discord, bitter controversy, uncharitable accusations, and wilful misunderstanding; religious and civil wars everywhere. A time when people thought they had obtained somewhat of religious liberty because the peace of religion, between the German Catholics and Protestants, in 1555, guaranteed to all who should differ in religion from the prince of the respective country protection against personal persecution, and the right to emigrate after selling their property (in which, however, they were often exceedingly oppressed)! A period when the government of Geneva burnt Servetus for not entertaining the common opinion respecting the Trinity, prompted in doing so by Calvin, and approved of by nearly the whole Swiss Protestant clergy; when even a Melanchthon, known for the mildness of his character, expressed his assent to this evil deed (see Calv. Epist., ed. Amstel., p. 92); when Luther was one of the very few prominent men who strongly opposed the killing for heresy on any account;[1] when Beza, to justify Calvin, published his De Hæreticis a civili Magistratu puniendis, a translation of which was afterwards laid before the magistrates of Friesland by some Calvinist ministers, insisting on the adoption of its principles—namely, the killing of heretics—against the inoffensive Arminians because they could not entirely adopt Calvin's doctrine of predestination (Brandt, Historie der Reformatie in de Nederlanden, II. D. Bl.

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[1] The Venetian ambassador in Spain—and the Venetian ambassadors formed at that time a class of the shrewdest observers and most faithful reporters to their government—writes home, under date of August 25, 1562, "I assure your highness, no religious movement on a large scale would be desirable for this country: there are many who long for a change of religion." This, and extracts of other reports, in Ranke, as above, vol. ii. p. 21. The Inquisition, therefore, became more active. There was much Protestantism in the south of France.

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[1] Luther wrote, "Auctoritate ejus statuti impii Magistratus pseudoprophetas et hæreticos interfecerunt quosquos voluerunt. Idem sequuturum esse timeo et apud nostros, si semel uno exemplo licitum probari poterit, seductores esse occidendos, cum adhuc apud Papistas videamus hujus instituti abusu innocentem sanguinem fundi pro nocente. *Quare nullo modo possum admittere, falsos doctores occidi;* satis est eos relegare, qua pœna si posteri abuti volent, mitius tamen peccabunt et sibi tantum nocebunt." De Wette, Letters, iii. 1013.

9–13); and when the Calvinists, in turn, were oppressed in Saxony by the Lutherans, and people persecuted for crypto-Calvinism! The age when an Edward Coke, in the very debates on the Petition of Right, which was to erect an insuperable bulwark around personal liberty, could excuse the imprisonment for life of the children of the Irish rebels, in the Tower, by saying that it had served for their salvation, because otherwise they would have been Catholics! When neither the Church of England nor the Presbyterians, when no one sect sufficiently large to claim power at all, could elevate itself above dogmatic exclusiveness and the consequent spirit of persecution and ecclesiastic arrogance.

LII. 11. Property, or, to use a term more fitted because more comprehensive, acquisition, is another primordial right, by which I mean all a man owns, acquires, and the means wherewith he acquires, that is, labor, skill, and exchange. Every man has a right, because it is his bounden duty, to maintain himself and his family, he has a fair share in the means of support offered by nature, and the right of acquiring property in the various ways indicated above, where I treated of property, because appropriation, acquisition, properly belongs to his nature. I have a primordial right to use my labor as I choose, if I do not thereby transgress the rights of others, and the state must neither disturb me in this lawful pursuit, nor allow others to disturb me, for instance, by prescribing to me, directly or indirectly, the limits below or above which I ought not to go, as the trade's-unions of late have done. Exchange is one of the most lawful, necessary, and natural means of acquisition, founded in the variety of soil, climate, genius of the people, agents of nature, etc., and one of the first and most effective means of civilization. Exchange lies in the great order of things, and a disturbance of it is always productive of injurious consequences. It ought never to be interfered with any farther than is absolutely necessary, but never to promote, as it is called, the interests of the many. No one has a right to do it, be it the daily and hourly exchange of labor and property in a community, or between nations by way of extensive commerce. Perhaps nine-tenths of all the wars of the last three centuries have arisen out of disregard of this primitive right and that of religion.

Society is deeply interested in the protection of the right of property, because the whole progress of society is connected with it. Fraser, in his Persia,[1] gives an account of a china-maker who had made some improvement in china ware, and was sent for by the court to make some for the shah, and of course for all the courtiers. To save himself, he bribed the officer who was to carry him to report that he was not the man, because his going to court and making china for the court would have ruined him, and he forswore attempting any further improvements. It is a striking anecdote, but in point. Mr. Elphinstone, in the work already quoted, mentions, on p. 255, that a man at Peshawur, a very large town in Afghanistan, wished to remit his money to India, and came by night to his secretary to count it out. "These precautions," adds the author, "were not taken from any present danger, so much as with the view to futurity."

There is no right more essential to man, as man, than that of acquisition—of property; yet none calls for more modification and regulation by the state, because it relates more than any other right to the material world, and more affects in its enjoyment the jural relations of others. All may live at the same time, all follow their conscience in matters of religion, but one only can own the same piece of land. The legislation of every country, therefore, has necessarily acted upon the subject; nor has property ever been considered as a right which could on no consideration be abolished and remodelled. Lycurgus made a new division; the French made a new distribution of a large portion of landed property. It is easily explainable; every one has an absolute right of acquisition by labor, but there are many other means of acquisition, not absolutely founded in nature, but found to be the best for the welfare of society. These, of course, may be changed: for instance, the laws of inheritance; everywhere they are entirely dependent upon legislation. Nowhere, however, except in the rude despotisms of force, is the acquisition by one's own labor interfered with on the score of preventing too large fortunes, though their accumulation by other means is interfered with,—for instance, in England, by prohibiting the accumulation of a fortune for a remote descendant. (Peter Thellusson's curious will, which occasioned the passing of 39th and 40th Geo. III., c. 98.)

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[1] Vol. xv. of Edinburgh Cabinet Library. On page 312 is related another anecdote, not entirely out of place here. A merchant had himself daily bastinadoed, and finally could bear a thousand strokes with a stick, so that he might be well accustomed to it if the governor should send for him, to beat out the confession where his treasures were hidden.

LIII. 12. Lastly, the individual has the right to move where he pleases: the right of personal liberty, as well as of exchange, would already sufficiently warrant this right, the right of emigration, of expatriation. Next to my life, is the place where I live, where I exchange my labor, the most important, to me, of all my rights which touch the physical world. Special circumstances may limit this right, as that of utterance, but it can only be by way of exception, notwithstanding all that has been said to the contrary on the ground of natural allegiance—an idea which necessarily arose out of other misconceptions of the relation between the king and his subject. A state would have the right to declare that every native-born person caught in arms against it should suffer death, on the score of danger. For instance, suppose the United States to be at war with Mexico. The latter country would doubtless endeavor to obtain American captains to command her ships, and the United States would have a right to declare that every native American made prisoner in serving Mexico should die; a law which would be borne out by the feeling of every true heart, to whom it is repugnant to fight against the country that bore him. But take another case. Suppose a Canadian has resided twenty years in the United States, and been an active citizen; a war breaks out between Great Britain and the United States; suppose, in addition, Great Britain is the wrongful assailer; an English army attacks the place where the emigrated Canadian resides: shall he not defend his country? nay, may not his very feelings be entirely engaged for the United States? There is no natural relation between subject and monarch, any more than that it is natural for man to live in society, in a state, and that the state has power over him for all legitimate purposes, that is, to protect him in its widest sense, not to interfere with him for any other purpose than to protect others at the same time, and of course it must be one of the first of all rights of a free being to choose that place and that society where he thinks he may best obtain his individual objects. It has been asked by superficial thinkers, Is it man's highest object to live well? shall he leave his country the moment he thinks he can find better food somewhere else? No, man has far nobler objects than merely good living; but before all he must obtain the common comforts of life for himself and family, as the basis for higher things, as he has to take care of health, not as the object but as the necessary requisite for a sound life, a life that answers its purposes. If over-population or over-taxation grind down a man so that he can hardly obtain food for his family, still less elevate them morally and intellectually, and he has an opportunity to remove to an unoccupied virgin soil, which, like a kindly friend, readily answers to every exertion with ungrudging abundance, shall such a man linger out a life of wretchedness, and bring up his children in sloth and ignorance, merely to satisfy a theory? shall he forget his most sacred duties towards himself and his family,—that is, to toil hard to become independent, a noble object to every man,—because some conceive it unpoetical to leave the native soil for a better one, though there is poetry in an emigrant who goes with nothing but a willing arm and his plough, a conqueror, to the West? It is the order of things to emigrate; but if a man has a right to emigrate he has likewise the right of expatriation—for man *ought* to be a *citizen*, according to his destiny. I have spoken already of the fact that no natior was more given to emigration, and thereby did confer incalculable advantages upon mankind, than the Greeks; yet who loved their country more?[1]

LIV. I shall return to the subject of natural allegiance when I speak of patriotism. Here I would inquire, Where does that relation exist, if natural means material? The son is naturally related to his father, and that relation cannot possibly be dissolved, but that of allegiance has been dissolved a thousand times. Why is there an oath of allegiance? We do not swear to be the sons of our mothers; and, above all, why have all oaths of allegiance ever been held, when necessity arose, as conditional only?[2] When an English king dies, his queen yet living, and no direct descendant of the king succeeds, allegiance is sworn to the new monarch saving the rights of any issue of the late king, or, in other words, on condition that within proper time the queen dowager do not give birth to a direct successor, as was the case respecting Queen Victoria. (See proclamation dated Kensington, June 20, 1837.) Does this not abundantly prove that allegiance is a political and not a natural relation, if the latter word be used in contradistinction to the former? though I know that this goes directly against Lord Coke, where this opinion is called the "error of the Spencers, that the homage and oath of legeance was more by reason of the king's crown (that is, of his politique capacity) than by reason of the person of the king, which was condemned by two parliaments, one in the reign of Edw. II., called Exilium Hugonis le Spencer, and the other in I. Edw., cap. i." (Calvin's Case, Coke's Reports, part vii.) The old English jurists speak of a law of nature above parliament—and so no doubt it is—according to which exists the indissoluble tie between subject and liege lord or lady, so that outlawry could not even affect this *natural* tie. (See the same case in Coke's Reports.) British history, as we all know, abundantly proves the contrary, for the tie has been dissolved. Blackstone (i. 369) says, "Natural allegiance is therefore a debt of gratitude; which cannot be forfeited, cancelled, or altered by any change of time, place, or circumstance, nor by anything but the united concurrence of the legislature." Not to speak here of the unphilosophical foundation of a general civil obligation, and not a specific one, upon the basis of gratitude—for suppose the citizen feels no gratitude, and is right in not feeling it, because nothing has been bestowed upon him to be thankful for, as certainly may be the case if the monarch does not protect, but, on the contrary, strives to undermine the laws—secondly, that gratitude is altogether a feeling over which the state has no control, and therefore no power to demand it—thirdly, that this gratitude for protection would be owing not to the king's person (for how can he personally protect me?), but to the state, in and by which he is king—not to speak of all these objections, Blackstone contradicts himself, if he means by natural allegiance anything like that claimed by the old British lawyers, because in that case it indicates a relation between two individuals, *indelibly* stamped upon both by nature, that is, by birth; yet the commentator says in the same sentence that allegiance may be dissolved by the united concurrence of the legislature. Can parliament declare a man not to be the brother of his father's son? can it declare a native Englishman not to be a native Englishman? Natural allegiance without unconditional allegiance is a logical absurdity, yet surely this is in the eye of every Briton a political heresy. For if the subject owes allegiance only so long as the monarch does not destroy instead of protecting the objects of the state,

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[1] [Their country was their πόλις. There was little love to Hellas, such as we feel. No race was ever more broken up.]

[2] Mr. Raumer, whom I quote here because he is a decided royalist,—not, indeed, an absolutist,—in speaking of the Portuguese revolution, by which the duke of Braganza was made king, against Philip II. of Spain, and after having stated the sound reasons of the Portuguese for breaking their allegiance, adds as his own remarks, "History shows there is a measure of tyranny from above downward, to suffer which slavishly, becomes a crime." To avoid misquoting, I continue his remarks: "And that on the other hand, at times, such a desire of opposition, disobedience, and revolt becomes so prevalent among nations that no government remains possible." History of Europe, etc., vol. v. p. 474.

—and no one will now be so hardy as to maintain that subjects must submit without resistance to a Heliogabalus,—then allegiance to a monarch is a thing *made* by law, which law, it is allowed, may rest on ancient custom, yet it can be unmade; and, what is more important, it is to the crown, that is, to the state, not to the person of the king. If not, how is it with the allegiance of the French, who have sworn it within the last forty years to ever so many persons and governments? The argument would have been much more plausible if natural allegiance had been represented as depending upon our nativity within the bosom of the particular nation, and, through it, connected with the monarch—in short, if national allegiance had been claimed; and the deep-rooted feeling of every true heart towards the nation to which we belong by blood would have afforded a far better foundation for allegiance than the very feeble one of gratitude; for our love to the country of our birth outlives in many instances our gratitude. The meanest factory-boy in Manchester may still feel attached to England, but it would be very difficult to point out what reason he has for gratitude. Gratitude is a feeling which can be called forth only by bounties over and above what I deserve. Does the state shower these bounties upon him? Does the state do more than it is absolutely bound to do? Is he not quit with the state as to gratitude, every evening, after an unrequited day of overwhelming labor? Who is bound to be grateful, the state, or the poor man who has always lived by his work, paid heavy taxes, and finally is pressed into sea-service, where he is crippled? The national allegiance cannot, according to English law and history, be severed, but the allegiance to the monarch can. (See Patriotism, where more on national allegiance as a primitive element of society will be found.) In Macdonald's case in 1746, before Chief-Justice Lee, the indissolubleness of British allegiance was maintained. (For the American doctrine of allegiance see Kent's Comment., ii. page 41 et seq. Important is Mr. Marshall's (afterwards Chief Justice of the United States) speech in the House of Representatives, on the case of Robbins, who had been claimed by the British, given up by President J. Adams, and executed by the former.[1] [2]

LV. The rights which I have called primordial, or some of them, have been termed by others absolute rights. (See i. Blackstone, 124.) This is not a very apt term, for, as the sequel of this section will show, there are no absolute rights, if this term mean either that they cannot be abridged, or that men cannot agree to give them up. Even the absolute right to life has been given up. The custom of drawing lots for being sacrificed to some deity has existed with various nations; and the doomed person was willing to be sacrificed. Though in many instances the wives of deceased Hindoos were induced by others to allow themselves to be burnt with the bodies of their late husbands, yet there are many instances of wives resisting all inducement not to be burnt. Still less apt appears the term when we consider that all nations allow the state to force me to *expose* my life. But the term is owing to that mistaken notion of a state of nature. Blackstone says, absolute rights are "such as would belong to their persons merely in a state of nature, and which every man is entitled to enjoy, whether out of society or in it." There is a strange confusion of ideas—rights in a state of *nature!* What is there a man may not do if out of society? And again, "which every man is *entitled* to enjoy." A state of nature, and yet *entitled,* which means having a *title* to; but who gives the title? So much for these fictions. Man never lived in this state of nature, because he never lived or could live without law, in however incipient a stage of civil development this might be. Fictions make matters under hand apparently very easy; but they revenge themselves, and we are unable to eliminate them again, as we may do in mathematics with assumed terms.

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[1] Compare with what has been stated on these important subjects, Hugo Grotius, Puffendorf, Chitty, Vattel, Blackstone, Kent, and for the legal references, D. Hoffman's comprehensive work, Course of Legal Study, 2d ed., Baltimore, 1836.

[2] [The British government has practically abandoned this doctrine of indefeasible allegiance by a statute of 1844, allowing one of the principal secretaries of state to grant all the capacities of a native-born British subject except two to foreigners desirous of being naturalized; and also by the provisions of the convention with the United States relating to naturalization in 1870.]

Others have used the term inalienable rights, an expression which would not have been so freely adopted had not those who used it started from the idea that the state is produced by contract, in which certain rights are given up for higher considerations; or had not those who renewed the more profound inquiries into the true character of government found already governments with extravagant claims, or which had absorbed almost all liberty already existing, when it appeared necessary to show that certain rights could not be alienated. But the term is liable to some objections. Does inalienable mean that those rights cannot be alienated? Facts speak against it. We see people submit to the privation of all enumerated rights. No right is more founded in nature than that of the father to protect his child. Yet Mr. Norris, in his Journey to the Court of the King of Dahomey, relates that children are taken from their mothers and placed in distant villages to destroy all family feeling. Is any right more sacred than that of the husband to protect the chastity of his wife? Yet Mr. Elphinstone (as quoted previously, p. 483) informs us that "one of the laws of Yaza forbids adultery. The inhabitants of Cariader applied for and received an exemption on account of their old usage (called Kooroon Bistaun) of lending their wives to their guests." What can be more undoubted than that I have a right to benefit by the communion with other minds, that no earthly power exists which has a right to interfere with my thoughts and their development? yet in Austria not only are certain books prohibited, but officers on the frontier may refuse the importation of any book they deem unfit, and the people do not seem to consider it as any peculiar hardship. If any right be inherent, it is that of life; yet when the sultan formerly sent a silken cord to his vizier, he kissed it and hung himself, and made no effort to defend his life. Now, suppose the cord had not been sent for an alleged crime; surely that vizier had alienated the right of life. Does inalienable right mean that which the people have a right at any moment to recover? The people have the right to recover or establish any right whatsoever, but they have frequently not the means. What right is there that could possibly be lost by way of compensation for benefits supposed to be derived from a ruling dynasty? Nations do not sell themselves as property. Does it mean those rights which ought not to be alienated? No right ought to be alienated which is necessary for the well-being of the people, nor is any right irrevocably alienated, nor can it ever be so.[1]

LVI. Be it repeated, primordial rights are those which flow directly from the nature of man inasmuch as he is a social being, rights which are of primordial importance, and which present themselves the more distinctly to the human mind and are acted out the more definitely in reality, the more mankind advance in civilization. It is on this account that the word primordial has been preferred to indelible, indefeasible, or inherent rights; for they are in periods of political transition obliterated, nor can they often be otherwise, and, what is more important, these latter names convey the idea that they were originally distinctly acknowledged, which is not the case. Imprescriptible is a better term; they might be called essential rights, if essential were understood to mean that they belong to the essence of the individual. They all flow from the great end of all political union, protection, which, of course, likewise presents itself with greater distinctness the more man advances in his civil progress. The state never ceases to protect; even the blackest criminal, the moment before his head falls, is yet protected. It was a most fallacious argument from the lex talionis, that "frustra legis auxilium invocat qui in legem committit," or, as St. John said before the lords, when he brought the bill of attainder against Earl Strafford (April 29, 1641), "He that would not have had others to have a law, why should he have any himself? Why should not that be done to him that himself would have done to others?"[1] Even some modern writers have erroneously endeavored to derive the punitory right of the state from the fact that the offender, by doing wrong, declares himself out of the jural society. (See, for instance, Fichte, Natural Law, vol. ii. p. 95, et seq., in German.) Nothing can be more untenable in all its bearings. On the contrary, the state being essentially a jural society cannot possibly act except by law and upon jural relations; and, in as far as the right of an individual is the condition of his union with other rational individuals, punishment is the right of the offender, however paradoxical this may sound at first, because we are accustomed to imagine under right some specific privileges. State punishment is likewise the protection of the offender, who without it would be exposed to all, even the most extravagant, modes of private redress. No offender would hesitate to acknowledge and claim state punishment as his right, if choice were left him between the state punishment, which, because it is state punishment, requires formal trial, on the one hand, and, on the other hand, those summary proceedings against criminals caught *in flagrante delicto*, which we find in perhaps all early codes, and sometimes acknowledged to a very late period (Blackstone, iv. 308), or to which an excited people sometimes return when the regular trial appears too slow for their inflamed passions, as has been the case in those riotous and illegal inflictions of death or other punishment, so unfortunately called Lynch law, in our own country. I say, unfortunately called Lynch law, for it is ever to be deplored if any illegal procedure receives a regular and separate name of its own. By this very application of a technical term it assumes an air of systematized authority, which has an astonishing effect upon the multitude, and in fact upon most men. Give a separate and technically sounding name to a thing, and you take from it much of its harshness for the human ear. Many a member of trades'-unions in Scotland would not have been willing to commit outrages upon the person of his neighbors, or even murder, had it not been called *slating*, or by some other technical term. The same principle applies to errors in science, religion, the arts. (See also Blount's Law Dictionary, tit. Lidford Law, and Blount, Fragm. Antiq., ed. of 1734, p. 327.)

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[1] [A right may be inalienable although I am deprived of it and unwilling or unable to take measures for its recovery. I may waive a right in a particular case, as the right to property, yet property may be an inalienable right. I may waive even the right to live, yet no one may take it away without my consent.]

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[1] State Trials, vol. iii. p. 159, taken from 8 Rushworth, 675. Though I blame the argument, I do not wish to be misunderstood as to the trial and sentence of Strafford. He deserved his fate. That we are now so happy as to be able to suffer ministers to live who conspire against the fundamental law, is no proof that it could then be done. Nor does the case of the ministers of Charles X. of France sufficiently prove that it can always be done; but it is a proof—and civilized mankind may congratulate itself upon it, as one of the happiest events in the nineteenth century—that to grant them life is infinitely preferable in every way, if at all possible. The difficult case to which I allude takes place when the minister has a large, powerful faction attached to him personally, especially when he is a military leader of consummate talent and civil war must be the consequence of mercy towards him. The difference between Strafford and Polignac was also this, that the former was a man not only of the highest talent, but of the highest mental energy—a man than whom no one could be imagined more fitted to be the defender of absolutism; there was much that was great in Strafford. Polignac was considered daring on account of his folly only. Not one royalist looks up to him at present. Strafford, if set free, could not but be drawn by circumstances, even if it had been against his will, into the highest spheres of momentous action; if imprisoned, all knew he would soon be freed.

The state does not act as a state the moment it ceases to protect, that is, to act on jural relations. We see then likewise how void of meaning such phrases as "the offended state," "the wrath of the state" ("of a king"), are. By what organ, in what possible manner, shall the state feel offended? Individuals may feel offended, for the feeling of offence is personal. A king may be wrathful; so much the worse for him; he is not so as king, but as a private person; the crown cannot be angry; and all that men have been obliged to hear about offended majesty and the terribleness of a king's wrath has arisen out of the unfortunate confusion of state and family, the crown and the individual who wears it; or it was urged in order to cover acts of hatred and personal revenge of the monarch or some officer with the garb of official revenge. Abject flatterers have not been wanting who openly pronounced or alluded to a similarity between the Deity and the monarch in these acts of dreadful indiscriminate revenge, while the slavish flatterers or hypocritical deluders of the people, in their turn, pleased the revengeful passion of the multitude and goaded it on to still greater excesses by telling them about the grandeur of a nation's revenge, not unfrequently seeking in the very vastness of the slaughter an element of grandeur which ennobled the revenge. When the devastating armies of the Convention were sent out against the doomed cities of Lyons, Nantes, Bordeaux, and Toulon, when but one problem seemed to occupy the many leaders and commanders, that of slaughtering the greatest number in the shortest time in the most savage manner, the people were told that a nation's revenge was like the thunders of nature —terrible and indiscriminate. Not a day passed that long speeches on the revenge of the people were not delivered in the Convention; and what is ever more gratifying to a heart maddened with passion than a justification, a reason, nay, a mere simile, that affords some plausible excuse for revenge? The state has nothing whatsoever to do with wrath, though the organs of the state may be wrathful; wrath and revenge, whether in reference to monarchs or nations, are political absurdities, and every political absurdity is a cruelty in practice. It was a saying of the deepest import, when Charles V. was asked how it happened that at times he would show himself vexed at trifles but never at things of magnitude, and he answered, "The person of kings may feel annoyed, not their office" (la persona de los reyes se puede enojar, no el oficio. Perez, Relaciones, 554). It applies equally to the people. They may be impassioned, they may be agitated by revenge like a roaring sea, but do not deceive thyself, whatever is done for revenge remains the act of each individual as such, and no vote of a political body changes the matter, for the state knoweth not revenge; it cannot know it.[1]

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[1] * "Crimes are the acts of individuals, and not of denominations; and there-

LVII. Rights, it has been stated, can only exist between men; animals have no rights. Man, as we have seen in the first book, differs essentially from the animal; and a being which unites those essential qualities enumerated there is called man. As a practical rule, I believe it may be stated that those beings who, in a sound state of body, speak or exchange, are men, communion and exchange of labor being the two most common manifestations of reason. As soon, then, as we see one of these marks, we are bound to acknowledge certain rights in the subject. Be the individual ever so low, or the race to which he belongs ever so far removed in capacity from ours, we have no right to kill him, for instance, like an animal, simply for our information or gratification. So sacred are the rights inherent in humanity that we acknowledge them though the distinguishing marks from which they first were derived have vanished; we esteem man even when nothing but outward form remains. An idiot, in intellect far below some animals, cannot be killed at convenience, and though he may suffer night and day, though the beholder may pray that his life may be taken away, we dare not do with him that in which several savage tribes consider themselves justified merely on account of the advanced age of a parent.

It is not here the place to investigate how far absolute necessity of physical self-preservation may justify one man in disregarding all the rights of humanity in another—for instance, when shipwrecked people sacrifice by lot one from among them to give sustenance to the others. The positive law cannot reach these cases; but who is there that lately perused the accounts of the several suffering parties into which the merciless element had divided the few survivors of

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fore arbitrarily to class men under general descriptions, in order to proscribe and punish them in the lump for a presumed delinquency, of which perhaps but a part, perhaps none at all, are guilty, is indeed a compendious method, and saves a world of trouble about proof; but such a method, instead of being law, is an act of unnatural rebellion against the legal dominion of reason and justice; and this vice, in any constitution that entertains it, at one time or other will certainly bring on its ruin." Burke, Speech at Bristol in 1780, Works, Bohn's ed., ii. 164.

the many people on board the steamboat Pulaski, that did not rejoice at Mr. Heath's manful opposition to the proposal of casting lots that one might be slaughtered for the rest? Who has read without moral loathing the account of the half-breed Indian, one of the companions of Captain Franklin on one of his polar expeditions, who was strongly suspected of having shot a member of the party in order to obtain food for some days? The law justly considers life as the first and most precious right; but is death, after all, so horrid? Is it not better to die than to feed on our own species?

LVIII. Yet, though the distinction between man and brute has thus been distinctly drawn, comparative anatomy and physiology are establishing daily more clearly the fact that all those beings comprehended under the vast term of the human species are not only morally or individually distinguished from each other, but in a very marked way physiologically, and as to their capacities, by whole races, thus forming a gradual scale of superiority. The most peculiar skulls of the so-called Pre-Inca race, found in South America, are so entirely different from ours that they alone show an essential difference of that race from ours. The Caffirs, the Bushmen, the Hottentots, and the poor Papuans, for instance, differ so materially in their anatomy and physiologic organization from the races which comparative anatomy as well as the history of civilization teaches us, by conclusive facts, to consider as superior, that we should abandon all truth were we to deny the difference. There is probably no reflecting man who was not painfully startled when he became first acquainted with these nevertheless imperative truths. We love to treat, in our theories and meditations, all men as absolutely equal; but truth is truth, however it may militate with beloved, nay, generous theories; and God is the God of truth. He must have had his all-wise ends in creating these different races, as he must have had his ends in creating those many tribes and races who without light, without expansion of thought, or cultivation, have increased and vanished, or who continue to people so many parts of the globe, yet do no more than people them, tribes which live without history, that is, without progressive change, interesting to the naturalist, but of no account in the history of mankind. Nor is it for us here to speculate how far these tribes, now so low and brutish, may be susceptible of organic improvement, which, it cannot be denied, has taken place with some races. The negro of Virginia is superior, as to the formation of his head, to the negro of the more southern states, because he descends from earlier-imported generations. The negro of the most southern of the United States, again, has much more expression of intelligence than the newly-imported negro in the West Indies. So has civilization improved the formation of the head in the Celtic race.

Man, as to his existence on this globe, may be considered in the following points of view: physically and individually; in this respect he forms a link in the great and endless chain of distributed matter, and has his meaning, as the animal, the plant, the mineral, has in God's vast creation. He may be considered individually, morally, and intellectually; in this respect he is above all other creatures, and an immortal being. Finally, we may consider man socially; in this respect he has his meaning as a member of a society which passes from one stage to another, which establishes institutions gradually developing themselves, and which by the amount of its civilization contributes a share to the general, gradual, and continuous development of the favored races—the history of the civilization of mankind.

Whatever may be the result of reflection, when we consider those lower races of the human species under these various points of view, this remains certain:

When we pronounce the name of man, we pronounce the belief of immortality;

When we call a being man, we attribute a separate moral value of his own to him, and cannot any longer use him merely for our benefit, as we use the animal. We attribute rights to him.

How far the primordial rights ascertained in preceding passages may practically expand with each race, no human mind can say; but they are the rights towards a greater and fuller acknowledgment of which each step in the progress of civilization infallibly tends, and therefore belong to the very nature of man.

CHAPTER VI.

The State necessarily comprises all.—No one can declare himself out of it; no one can be considered out of it.—Different Meanings attached to the word State at different Periods.—Mankind divided into many States.—Why?—Sovereignty.—Definition.—There were never individual Sovereigns before the Formation of the State.—Who is the Sovereign?—Manifestations of Sovereignty.—Public Opinion, Generation of Law, Power.—Public Opinion.—Law: what does it consist of?—Public Will.—Nature, Common Sense, Custom and Usage, Common Law, Charters, Codes and Statute Law, Decisions, Precedents, Interpretation, Authentic Interpretation, Digests.—Judge-made Law, so called.—Power rests with Society, cannot rest anywhere else.—Government, what it is.—Various Kinds of Governments as to their Origin.—Always rest on Opinion.—Importance of distinguishing State, Government, Sovereignty, Supreme Power.—Divine Right.—Monarchs called of God.—Frederic's and Joseph's View.—No Monarch ever was or can be Sovereign in the true Sense.—Meaning of the Word Sovereign it used of the British Monarch.—Declaration of Rights.—True Relation of Monarch and People.—Can the King really do no Wrong, constitutionally or legally?—He can do so, and it has been decided that he can.—British Monarch the Fountain of Honor.—Its Meaning.—Different Title of Monarchs; some of the Land, some of the People.

LIX. ALL actions of man, and all the relations in which he stands to other men or to things, may be disturbed, and all his actions and relations must be consentaneous to the fundamental principle that he is directed by his nature to live in society, and to obtain in and through society his highest object, namely, that of being fully man. Hence it is that the state, which has been found to be the society, founded upon the relations of right, and which has to protect them in the highest sense of the term, extends to all members of that society, and to all their relations in as far as they manifest themselves outwardly, that is, by actions. The state must maintain right; it must repress interference with right, and must help every one to his right, which includes, as has been indicated several times, that it must assist me in obtaining that, by and in society, which is necessary for me physically and intellectually, and which I cannot obtain individually. No man, therefore, has a right to declare himself out of the state, and no circumstance can sever him from the state, so long as he is man, that is, lives, because he has always, by the mere fact that he is a human being, rights, the infringement of which the state must repel. Passive members, *e.g.* children, are still members of the state, and demand its action. On the one hand, therefore, the Jacobites were as much members of the state, and England had as much right to make them amenable to the laws of the land, as if they had taken the oath of allegiance; on the other, paupers and idiots, aliens and travellers, are as much within the sphere of the political action of society as the richest and wisest, or as the members of long-settled families.

The word state has had very different meanings, ever since it has been used; that is, people have taken different views of the subject at different periods, as of every important one; and the idea of the state follows the general law of ideas, namely, that they are more clearly developed and present themselves with their more distinct and essential characteristics only in the course of time, being subject likewise to unfavorable influences and consequent retrograde movements. I shall hereafter speak farther of the view which the Greeks took of the state; the Romans formed originally a conquering city. At a later period, the emperor had all the power over very incongruous parts of the empire. Yet even then the idea was distinctly recognized that the emperor was placed on the throne to do justice; that men were congregated for some mutual benefit. Previous quotations prove it. The emperor of Germany swore at his coronation to protect the widows and orphans, and have justice administered to all.

"Formerly," says Hallam (note to page 51, vol. i. Constitutional History of England), "the king had taken an oath to preserve the liberties of the realm, and especially those granted by Edward the Confessor, etc., before the people were asked whether they would consent to have him as their king. See the form observed at Richard the Second's coronation, in Rymer, vii. 158. But at Edward's coronation the archbishop presented the king to the people as rightful and undoubted inheritor by the laws of God and man to the royal dignity and crown imperial of this realm, etc., and asked if they would serve him and assent to his coronation, as by their duty of allegiance they were bound to do. All this was before the oath. (Burnet, History of the Reformation, ii., App., p. 93.) Few will pretend that the coronation, or coronation oath, was essential to the legal succession of the crown or the exercise of its prerogatives. But this alteration in the form is a curious proof of the solicitude displayed by the Tudors, as it was much more by the next family, to suppress every recollection that could make their sovereignty appear to be of popular origin." Hallam gives credit to Lingard for having remarked this important change in the coronation ceremony.

At the late coronation of Queen Victoria, the archbishop of Canterbury pronounced these words, while the queen remained standing and turned towards the people on the side at which the recognition was made: "Sirs, I here present unto you Queen Victoria, the undoubted queen of this realm; wherefore, all you who are come this day to do your homage, are you willing to do the same?"

LX. In the worst feudal times the idea of the state was probably more obscured than long before or ever after. Actual force ruled in many parts of Europe. But even then the individual feuds were considered as unhappy anomalies. Robbers may do many bold acts, and unhappy is the state of things where they may do them with impunity. Duke Warner wore a legend worked in silver on his surcoat, "I am Duke Warner, the chief of the Great Company, the enemy of God, of piety and mercy." (Life of Joanna of Sicily, vol. ii. p. 2.) Melancholy is the age or country, indeed, where this can even be dared, where this is suffered even among the banditti; but the idea had never been given up that rulers became such in order to maintain justice and to protect the church.[1] Even in the worst and most heartless periods of French politics, when an indefinite idea with regard to the state seemed to be floating about, sometimes, as is common to this day, confounding it with the government; sometimes imagining it as something built upon the people, who thus are believed to form the substratum of the state, and were consequently compared by Richelieu to mules;[2] sometimes as if it were concentrated in the monarch, who thus had a right to, and was the rightful owner of, all property, church and lay;[3] or as if the government, considered in its consecutiveness from age to age, were an instrument in the hands of the royal house or consecutive family;—even then the obedience of the people was always claimed, either on the ground of general benefit that without it everything would dissolve into anarchy, or on the ground of divine law, that is, the divine order of things, and of course the divinity could not be imagined as having created millions for the benefit of a few or one; nor was it so considered, however contrary the actions of the rulers frequently were. When the same Louis XIV. who had said, "I am the state," was at the point of death, he said, "Je m'en vais, mais l'État demeurera toujours." (I depart, but the state will endure forever.) He acknowledged he was not the state, but, at the highest, its representative, for otherwise the state must have departed with him. Thus, when the king of France died, it was customary to proclaim the death by the words, "The king is dead, long live the king." And what was this "state" which would endure forever? Did the court form the state, or the nobles, or the *employés*, the navy or army, the judicial courts? The people have always instinctively discerned, sometimes in spite of the professed doctrines, between the monarch with his government, and the country, *i.e.* the state. There was never yet a Frenchman, plebeian or courtier, for whom the words *la France*, though politically considered, had not a very different sound from that of the word *monarque* or *roy*. The state is what the ancients fitly called *res publica*, and defined by being *res communis*, *res populi.*

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[1] * At times, again, the word state was used to designate neither the actual government, nor the king, nor the nation, but rather what we now would term the organic institutions of the state, the primary organism of the state. Thus, president Jeannin of the parliament of Paris said at the states-general of 1593, when the question whether the "sovereign courts" should be admitted to the assembled three estates, in order to elect a king of France, after Henry III. had been murdered, "Since these high authorities (the parliaments) have thus formed ever a part of the state," etc. See Raumer, Hist. Sixteenth and Seventeenth Cent., illustrated by Original Documents, translated from the German, 2 vols., Lond., 1835, vol. i. p. 364.

[2] In Richelieu's Political Testament addressed to King Louis XIII., chap. iv. sect. 5, he says, "The people may be compared to mules, which, being accustomed to the load, are more spoiled by a long rest than by work; but as this work ought to be moderate, and as the load of these animals ought to be proportionate to their strength, it is the same with regard to the subsidies to be paid by the people. If they are not moderate, even if they were useful to the public, they would be nevertheless unjust." Considering those times, when the term politics meant a system of wisdom and experience to manage the affairs of the king, and when "*la gloire de S. M.*" was often used as designating the great and main object of the state, precisely as now frequently the success of the party is substituted for the "welfare of the people," these words of Richelieu's appear quite moderate.

See the Testament of Louis XIV.

LXI. Mankind extends over so vast a space, the various countries have characters so different, the several portions of mankind stand in so different degrees of civilization, their wants, physical and intellectual, their taste and genius promoted or retarded by circumstances and events uncontrollable by them, the objects they strive for by joint exertions, their dangers, desires, interests and views, languages and religions, capacities and means, are of such infinite variety—that human society does not, and, according to the order of things, ought not to, form one state. There exist many states; that is, mankind is divided, in consequence of countless concurring circumstances, into a number of societies, in each of which exists the absolute necessity of forming a state—a necessity without which man cannot rise higher—a necessity which is felt by all at all times, however different the view that people take of the state, or though the state may not even yet have developed itself in their minds as a separate idea, distinct from all other societies. Men cannot exist without the state; men never have existed without the state; for everywhere we find rights acknowledged, laws and rules observed, authorities established. The idea of law itself need not have presented itself very distinctly to the mind; it may yet be in a great measure bound up with the personality of the authority, whom all obey, who commands and gives the rules; yet even then the state exists in its incipient stage, because a law — although not of necessity a written one—which the others obey, gives him who is the superior, power or authority to prescribe rules and settle differences. So have men never lived without the administration of justice; they cannot by any possibility. Yet there is a vast difference between the first summary procedure of a patriarch, and the elaborate, well-poised trial of a highly civilized community. Though man has never existed without some at least incipient manifestations of the love of the beautiful, still there is a great difference between the tattooing of the savage or his first uncouth idols, and the perfect beauty and simplicity of the Grecian Aphrodite. Does this difference justify us in asserting that the love of the beautiful is not natural in man but acquired, that there is no original æsthetic disposition in him? If so, why does taste, rude, correct, or perverted, pervade all mankind and form one of the mainsprings of all industry? Men, be it repeated, are nowhere without the state, and this is one of their distinctions from the brute. Brutes nowhere acknowledge a superior or leader. If they follow greater force, or if many females follow one male, it is the yielding to physical power or the operation of physical laws, not the acknowledgment of superiority. It is the high distinction of man to acknowledge authority.

Wherever we find men, in whatever stage of social development, the barbarous Patagonian, the restless son of the desert, the moving hunter of the prairie, the piratical Malay, the forlorn Esquimaux, the slavish Asiatic or the free American, the submissive Russian or the manly Briton, where there are men, there are also rules, rulers and ruled, ordainers and obeyers, judges and judged, those that have power and those that yield obedience, chieftain and followers, princes and subjects, magistrates and citizens—always superiors and inferiors. The state is natural to man, is absolutely necessary to man. Each state carries within itself the absolute necessity of existence; not that each separate state must necessarily exist separately for itself, but that the people who constitute the state must needs live in *a* state, in a jural society. There is an absolute necessity of man's living with man in relations of right, of rules which guide his actions, of power to enforce these rules when not willingly obeyed, or of deciding where the rights of various individuals clash with each other—an absolute necessity of man's living in society and of his being protected therein.

And this absolute necessity, with the power necessarily flowing from it over all outward relations, we call sovereignty. The right, obligation, and power which human society or the state has to do all that is necessary for the existence of man in society, is the true sovereign power. It is the basis of all derived, vested, or delegated powers, the source of all other political authority—itself without any source, imprescriptible in the nature of man. It exists by absolute necessity, and draws from its own self-sufficient plenitude. Since society, and hence the state, never ceases, and since with them their necessity of existence never ceases, so is the sovereign power never exhausted or extinct, but acts in all cases in which the derived or vested powers, the powers of trust, are at an end, it being the never-ceasing fountain and the last resort of all power, the "summum imperium," the "summa potestas nulli subjecta." The true definition of sovereignty, therefore, would be that it is, Prima et summa civitatis vis et potestas—*vis*, because of its being the primitive energy of the state; *potestas*, because of its being the ultimate and supreme, chief and ever-active power. It has been seen that justice in its broadest sense, as that which is just, is the foundation of the state, and its vital element; and thus Milton is right when he says, "Justice is the only true sovereign and supreme majesty upon earth." (Tenure of Kings and Magistrates, vol. ii. p.

172 of Milton's Prose Works, Boston ed.) This is the true divine right of sovereignty. "Item author justitiæ est deus, secundum quod justitia est in creatore." (Bracton de Leg. et Consuet. Angl., lib. i. cap. 3.)

LXII. To repeat briefly the train of the argument: As axiom I stated, Man is made to be man, or, I am a man, therefore I have a right to be a man. Man cannot be man without society. Society cannot exist without jural relations between its members, because no member ought to give up, or can give up, his individuality. Society, considered as to its jural relations, or jural society, is the state. The necessary existence of the state, and that right and power which necessarily or naturally flow from it, is sovereignty. Sovereignty derives its power from no previous or superior one, but is the source of all vested power.

If a man were to ask in earnest, whence does this power flow, he could only be answered by a counter-question, such as, whence do you derive the right of breathing? He would answer, "my existence is the self-evident proof of my right of existence; and in order to exist, breathing is absolutely necessary." The same applies to sovereignty. Absolute necessity gives in all cases sovereign power, namely, that primitive power which supersedes all other, as it is its source. The crew of a vessel are in a state of mutiny; the captain has been killed; an energetic man among the passengers unites the latter and part of the crew with himself; he seizes the mutinous sailors; there is no possibility of subduing or preventing them in any other way from piratical acts. He tries them with the assistance of his fellow-passengers, and hangs them. He is right, and, provided he can prove everything as stated above, he will be justified by any court which decides according to strict justice and this alone.

The French vessel La Méduse (Medusa) went in 1816 to the river Gambia, and was wrecked. About one hundred and fifty of the crew built a raft and suffered incredibly. They enacted a law that any one who, unauthorized, should open the wine-casks, which were of infinite importance to them, should be thrown overboard. Some consequently were thrown into the sea, having opened a cask in the night. They likewise passed a law that thirty of their half-dead comrades should be consigned to a watery grave, because they could not live long and still were consumers of the very small stock of provisions, which but barely kept the stronger ones from starvation. Without this law the remaining ones would have lost their chance of living.[1] Provided the people who tried and executed the murderer Patrick O'Conner, as related in the Galenian of June 23, 1834—a paper published at Galena, in the northwest angle of the state of Illinois—could not by possibility obtain in their then wilderness the means of trying this dangerous man, who had for a long time committed crimes against them, they were right in doing so for themselves.[2] It may have been the fault of the state not to provide that part of its territory with sufficient means of administering justice; I only speak here of the supposed necessity under which the people labored, and the consequent right.

Equally necessary with physical existence and its protection is, as has been shown, the social existence of man, and consequently its insurance, from which follows sovereign power. This is not the place to treat of the great danger of resorting to this sovereign power, implied in necessity, in single cases, and of the enormous abuse to which it may lead, if wrongly applied.

LXIII. It appears, then, that sovereignty is a power and energy naturally and necessarily inherent in society; it only exists with society, it cannot pass from it. It is the vital principle of the state, and any one can no more live for another than one or more can have sovereignty for another. The assertion that society, or the people, divest themselves of sovereignty and delegate it to some one else, is as contradictory in itself, and can be as little imagined, as if we should force our mind to suppose the trees of a forest delegating one tree to be green for them, or to sprout in spring for them —nay, more difficult, because sovereignty and state are ideas essentially united, one being only the attribute of the other, as omniscience is of God. Nor is it any more correct to imagine a human individual at some period or other a sovereign for himself. Mably said, "Man appears to me only to be a dethroned king." (Des Droits et des Devoirs du Citoyen, p. 12.) Strange kings (that is, holders of supreme power), without kingdoms (that is, with power over nothing). Man imagined without the state is merely an individual man; but sovereignty is the inherent attribute of society. Had people always traced out the true nature of the state, and acknowledged that this alone is the state of nature for men, they would not have fallen on the one hand into the grave error of imagining each man "before the state was formed" as stalking about with an imperial crown on his head, and a sceptre for his walking-stick; on the other, that men, forming a joint-stock sovereignty company, could delegate this sovereignty to any one whomsoever. Of this more hereafter.

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[1] An account of this thrilling transaction may be found in the London Saturday Magazine of April 12, 1834. See also Captain Ross's Voyage in 1829 to 1833, page 430, American edition, with regard to the opinion of the English public respecting his sick men, and the brave captain's indignation.

[2] This very peculiar affair was reprinted, among other papers, in the National Gazette (Philadelphia) of July 16, 1834, which will be more accessible to many readers than the Galena paper.

Society never can delegate or pledge away sovereignty, and, of course, never has done so. It is clear, from what has been stated before, and it will be shown by historical evidence in the sequel of the work.

He in whom rests sovereignty is called the sovereign. Who is it? Who else can it be but society? Not, I repeat it, by a union of millions of little sovereignties; nor is each member of the state possessed of a fragment of sovereignty. Sovereignty has nothing whatsoever to do with the individual. Notions which are radically wrong never show their untenableness in so glaring a light as when reduced to plain reality.

There are about fourteen millions of people in the United States, of whom perhaps three millions are grown white male citizens. If the people are the sovereign by a union—a conglomeration of previously detached parcels of sovereignty—each member holds a share in the sovereignty. Now, let me for a moment withdraw my one three-millionth part of sovereignty, which would be my due for myself and family, and make use of it; for instance, let me make a one three-millionth part of war against a foreign power, giving up, on the other hand, all protection I might otherwise claim of the United States. I declare a three-millionth part of a war against Great Britain. I will not kill, I will only wage what might be fairly considered a three-millionth part of a war. I take forcibly the purse of an Englishman; they catch me; but, in spite of my open declaration of war, they will not treat me with a three-millionth part of that consideration with which even a common soldier, if prisoner of war, is treated. They try and transport or hang me, as the case may be; nor is this the worst. Not one pang of sympathy, not one voice in vindication of my rights at home! Not one speaker on the floor of Congress, who shows that Great Britain, by disregarding my fraction of sovereignty, has seriously endangered his!

LXIV. Blackstone acknowledges the sovereignty of society, not indeed in so many words, but the relations in which the laws and history of Great Britain stand to each other forced him to state it nevertheless. The reason why he did not distinctly acknowledge it as a principle was because he would not go beyond the positive law, and indeed he speaks of "fertile imaginations" being requisite to furnish the cases of such a violation of the constitution by the king as would amount to abdication. But it does not require a fertile imagination" to think over what has actually happened in history so many times. Still, he cannot help going at times to the very limits and borders of positive law. Thus, he says, "For, as to such public oppressions as tend to dissolve the constitution and subvert the fundamentals of government, they are cases which the law will not, out of decency, suppose." (Vol. i. 244.) Constitutional law has nothing to do with decency, but with right, and right alone. The constitution of England does not contemplate these cases, because positive law must end somewhere, and though the constitution were to adopt the rocoss of Poland, which was a "lawful form of insurrection" in the former elective monarchy of that country, it would again remain to be decided whether there is or is not lawful reason for the rocoss. The passage in which Blackstone acknowledges the sovereignty of society is this (vol. i. 245):

"Indeed, it is found by experience that whenever the unconstitutional oppressions, even of the sovereign power" (meaning the royal power), "advance with gigantic strides and threaten desolation to a state, mankind will not be reasoned out of the feelings of humanity; nor will sacrifice their liberty by a scrupulous adherence to those political maxims which were originally established to preserve it. And therefore, though the positive laws are silent, experience will furnish us with a very remarkable case, wherein nature and reason prevailed. When King James the Second invaded the fundamental constitution of the realm, the convention declared an abdication, whereby the throne was rendered vacant, which induced a new settlement of the crown. And so far as this precedent leads, and no farther, we may now be allowed to lay down the law of redress against public oppression. If, therefore, any future prince should endeavor to subvert the constitution by breaking the original contract between king and people, should violate the fundamental laws, and should withdraw himself out of the kingdom; we are now authorized to declare that this conjunction of circumstances would amount to an abdication, and the throne would be thereby vacant. But it is not for us to say that any one, or two, of these ingredients would amount to such a situation; for there our precedent would fail us. In these, therefore, or other circumstances, which a fertile imagination may furnish, since both law and history are silent, it becomes us to be silent too; leaving to future generations, whenever necessity and the safety of the whole shall require it, the exertion of those inherent (though latent) powers of society, which no climate, no time, no constitution, no contract, can ever destroy or diminish." So far Blackstone. I have only to remark that the "nature and reason" which prevailed in the case of James II. is all I claim for the foundation of the state with its sovereignty, that the end of the passage quoted is the amplest acknowledgment of the sovereign power of society, and that I prefer to call sovereign power that "inherent power" which is even above the power called by Blackstone and generally sovereign power, and shall designate the latter by a different name. From the next section it will appear, however, that this "inherent power" is ever active, and not so entirely "latent," and that without its action society could not exist for a moment.

May I be permitted to conclude the present section with an extract from Hallam (Const. Hist., i. page 393), strongly supporting the view just given:[1]

"In point of fact, neither James I. nor any of his posterity were legitimate sovereigns, according to the sense which that word ought properly to bear. The house of Stuart no more came in by a lawful title than the house of Brunswick; by such a title, I mean, as the constitution and established laws of this kingdom had recognized. No private man could have recovered an acre of land without proving a better right than they could make out to the crown of England. What then had James to rest upon? What renders it absurd to call him and his children usurpers? He had that which the flatterers of his family most affected to disdain, the will of the people; not certainly expressed in regular suffrage or declared election, but unanimously and voluntarily ratifying that which in itself could surely give no right, the determination of the late queen's council to proclaim his accession to the throne."

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[1] * I think the best name for what is usually called sovereignty in a monarch, and which, according to me, is but monarchical supreme power, would be *principate*, not principality. We speak of the principate of Cæsar; the word bears its legitimacy within it.

LXV. The sovereignty of society manifests itself:

1. By public opinion.
2. By the generation of the law.
3. By power.

1. *Public opinion.* The term is taken here in its most comprehensive sense, not only meaning the opinion of the community in as far as it has been made public, especially with regard to some specific measures, pending or adopted, but as the opinion of the public, of civil society, as we are apt to term public anything connected with the state, for instance, public life, public character. I understand by public opinion the sense and sentiment of the community, necessarily irresistible, showing its sovereign power everywhere. It is this public opinion which gives sense to the letter, and life to the law: without it the written law is a mere husk. It is the aggregate opinion of the members of the state, as it has been formed by practical life; it is the common sense of the community, including public knowledge, and necessarily influenced by the taste and genius of the community. How is it formed? It is formed as the opinion of any society is formed, which must always consist of leaders, superior men, men of talents, or well-informed men, who had an opportunity to see or inform themselves, and less gifted men, or less informed persons, the acquiescing or trusting ones. Not that the leaders prescribe with absolute power; they only either pronounce clearly what has been indistinctly felt by many, or they start a new idea, which, in being received by the acquiescing ones, has to accommodate and modify itself to the existing circumstances. The leaders themselves are under the strongest influence of that sense and sentiment of the community, for from early childhood they live in the same relations with the others. Public opinion is not only an opinion pronounced upon some subject, but it is likewise that which daily and

hourly interprets laws, carries them along or stops their operation, which makes it possible to have any written laws, and without which any the wisest law might be made to mean nonsense. It is that which makes it possible to prescribe and observe forms without their becoming a daily hindrance of the most necessary procedures and actions; it is that mighty power which abrogates the most positive laws and gives vast extent to the apparently narrow limits of others; according to which a monarch ever so absolute in theory cannot do a thousand things, and according to which a limited magistrate may dare a thousand things; which renders innocent what was most obnoxious, and at times makes useless the best intended measures, protecting sometimes even crime.

I do not indeed say that this sense and sentiment of the community is always right. Who will deny that it was the public opinion of the seventeenth century that there were witches, that they ought to be killed—a power which forced judges against their judgment to allow the unhappy beings to be prosecuted, however distressing the whole procedure might be to them? See an instance in the Life of the Lord Keeper Guilford, London, 1819, vol. i. page 250. But, generally speaking, public opinion is less apt to be wrong on broad important questions than that of individuals, because it is nothing else than the result of individual opinions modified by one another. "I know one," said Talleyrand, according to De Pradt's Guarantees to be asked of Spain, chap. v., "who is wiser than Voltaire and has more understanding than Napoleon himself and all ministers who ever were, are, or will be, and this one is public opinion." In the second part of this work I shall inquire into the question when a citizen is bound boldly to disregard public opinion, and when to submit to it his individual judgment; here I have to treat of it only as the attribute of sovereignty.

Public opinion has abolished torture long ago in Denmark, yet but lately it was abolished by written law. The code of Charles V., still the penal law of several parts of Germany, prescribes most severe and frequently cruel punishments, entirely at variance with the spirit of the age, which is but a different name for public opinion applied to a larger society and considered as to a given period. The consequence has been that all manuals of German penal law give the respective punishments fixed by the code of Charles and those which are awarded according to "practice." Yet this "practice" has never been legislatively enacted. No one according to law shall be present at the debates of the British parliament, except members. This is the positive law. There are galleries built for the public, and convenient places for reporters; this is the public opinion. Let any one, let the ministers, let the monarch, dare to insist upon that law. The British constitution, that is, the law, says that the king may veto any bill which has passed through both houses; British public opinion prevents the monarch from making direct use of the privilege, at least he has not withheld his approval for now nearly two centuries. A law banishes all members of the Bonaparte family from France. Lately one of them visited the king of the French at the Tuileries; all the papers mentioned it. Why are so many things absolutely impossible, in spite of all the law that might be cited in favor of it? Because public opinion decides thus, that is, in many cases, common sense, which must always decide on the application of rules, whether they be furnished by grammar, architecture, or politics. (See Hermeneutics.)

When Queen Victoria went, on December 23, 1837, to the lords to give assent to various bills, the clerk called out, after the title of one had been read, *Le roi le veut* (the king wills it), instead of *La reine le veut* (the queen, etc.). The clerk, according to the papers, did not correct himself. Now, suppose a lawyer were to build an argument upon this bill's never having become a law, because it had never received the royal assent, there being at the time no king in England. He might bring most powerful arguments in favor of the necessity of observing strict forms, the more urgent the more important the respective spheres of action are; he might quote innumerable precedents of mere violated forms having defeated otherwise legal measures; he might bring powerful analogy within a hair's breadth of his case; and yet would he be able to move his case one step? Every one would laugh, or, if not, so much the worse for the state of public opinion.

There is to this day a law on the statute-book of South Carolina, unrepealed by the authority which made it, to the effect that every male of age shall go to church well armed. The dangerous state of the country at the time required it against the Indians. Suppose a conscientious citizen were to appear in church with a brace of pistols, cutlass, and rifle. The whole community with one voice would set him down as deranged, he would lose all public confidence, and would most materially injure his family, besides disturbing public worship. Suppose, on the other hand, any public officer were to take it into his head to fine a citizen for not having appeared well armed in church, according to the old law. Would he not be scouted by judge, jury, people, by every one? And the law does stand repealed by the irresistible sense and sentiment of the community. This does by no means preclude cases of strict adherence to an obsolete law for the very purpose of drawing public attention to it and of effecting a final implicit *expression* of repeal by public authority. For laws, though obsolete, and universally acknowledged to be so, may still be of a character which renders them either dangerous or inconvenient in special cases. Or they may, in their character, be iniquitous, and the public morality may demand their erasure merely on the score of public propriety, decorum, or morality.

Public opinion, in this wide sense, is the continued sovereign action of society, and also the link between society at large and the state, when a given society is either narrower or wider than a given state.

We are apt to believe that, from the want of publicity, absolute states are not ruled by public opinion. It is true that public opinion does not act upon so many subjects, but it is in Asia as powerful as in Europe, on those subjects on which

l. acts at all.[1] Let an Eastern monarch attempt anything against the opinion of his people at large,—for instance, attempt public irreverence against the Prophet. The king of Denmark was, by the fundamental law of 1660, absolute in every way. The fancy of a man brought up in a constitutional country cannot invent a law which provides in so detailed a manner for the monarch's being above all law, and that nothing whatsoever shall ever be binding for him or limit his power, not even he himself. So far the theory or the letter; but was the Danish king really at liberty to do what he liked? Suppose he had attempted so mean a thing as the prohibition of the Danish national dish, called grit: would his absolute power have supported him? Theoretically, the king of Prussia was absolute when he ordered his minister, by cabinet order of July 18, 1798, to lay certain proposals of a union between Lutherans and Calvinists, before the public, and report to him, "when public opinion has decided upon their expediency," etc. March 25, 1813, the emperor of Russia and the king of Prussia issued a proclamation, which contains this passage: "Their majesties expect a faithful and complete coöperation of every German prince, and they are pleased to suppose that none will be found among them ready to be and remain a traitor to the cause of Germany, so that thereby he should deserve to be annihilated by the power of public opinion and the force of arms, which have been taken up" (against Napoleon).

At times we see a man apparently act directly against public opinion. Richelieu saw the enormous extent to which duels were then carried in broad daylight. He dared to execute according to law two noblemen (Bouteville and Chappelles) for this offence. The whole society seemed vehemently opposed to him, nor would he have been able to carry his point, had it not, after all, in a still larger society been felt that he was right. It is one of the greatest traits of a noble citizen to be able to see one *layer* of public opinion through another, or, if he does not see it, to trust in God that it must be there, and act accordingly.

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[1] * "The emperor—the theoretical father of his people—does not find it so easy *openly* to impose new taxes as his necessities may require them; and his power, though absolute in name, is limited in reality by the endurance of the people, and by the laws of necessity." Davis, Chinese, vol. ii. p. 428.

Guizot, in his History of Civilization in Europe, says that public opinion was stronger under Louis XIV. and Louis XV., and exercised more influence upon government, than at any previous period, yet at none had all the direct and official means by which the people can exercise any authority more completely been cut off. It impelled government more strongly than when the estates existed or the parliaments interfered in politics. See his Lecture VI.

Napoleon, a good authority as to the practical operation of public opinion, said, "Public opinion is an invisible, mysterious power, which nothing can resist; nothing is more movable, more vague, more powerful; and, capricious as it is, it is nevertheless true, reasonable, just, far more frequently than one is apt to think." (Las Cases, Mémorial, vol. i. p. 452, edit. of 1824.)

LXVI. 2. *Law*, from the Anglo-Saxon *Lagu*, *legu*, that which is laid down, settled,[1] is a rule of action with binding force, or law is a (general and) binding rule respecting effects to be produced by certain agents. These agents may be physical or moral. Laws which refer to the former are called laws of nature, inasmuch as we imagine the principles of the physical changes prescribed by the authority of the maker. Laws respecting moral agents determine human will as a free power of rational beings. They ought to be obeyed, but may be disobeyed. If these laws relate to the outward actions only, they are jural laws (*leges juris*); if they relate to the internal assent, depending upon man's motives, they are laws of virtue. If we call the first, principles, the latter, commandments; we may call jural laws, simply laws. We have to do here with these alone, and I shall designate them by the simple term law; using, however, for the present, the word in its most comprehensive sense, that is, for all rules which direct with binding power, no matter whence it arises, our jural actions, or actions relating to right. In as far as laws are rules acknowledged (sanctioned, authorized) by the state, that is, publicly by society, no matter in what manner, whether by distinct legislative action or by gradual recognition, for instance, by repeated decisions of some proper authority, law is public will. In many cases the line where public opinion passes over into public will is distinct; in some cases public opinion is so strong, decided, and binding, respecting some specific subject, that the line cannot be so distinctly drawn. At other times some law distinctly says, or it has been settled by custom, that well-settled usage, which is but a species of public opinion, shall be law. That public opinion, taken in the sense in which it has been used in the previous section, and law, must approach to each other in many cases very closely, is clear from their very nature. The process of public opinion passing into public will is in many cases imperceptible. The question now is, What are these rules which determine man's jural actions and serve to others as rules in judging of them? They are the following:

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[1] Swedish *laga*, in ancient Low-Saxon *lage*, connected with German *legen*, the English to lay, lay down, which goes through all Teutonic and many other idioms. (See Adelung, ad verb. *Legen*.) The German for law is *Gesetz*, that which has been set, settled, set down. The Dutch is *Wet*, from *weeten* to know, of the same root with the English *to wit*, that which is known, acknowledged. The old Frisic, a, e, ewa. See likewise *Jus* in Ramshorn's Latin Synonymics, vol. ii. p. 125.

Nature and necessity.

Common sense.

Custom and usage (the unwritten expression of public will), either in any branch of practical life, or in judicial matters themselves, and, again, either existing, but as yet not specifically acknowledged by authority, or distinctly acknowledged, which becomes the

Common Law of the land.

Fundamental laws, charters, organic laws; they generally rest largely upon custom: hence the oath of monarchs to administer the government according to law and custom. See Hermeneutics.

Written constitutions.

Codes of other countries, which have force by the respect paid them, as the civil code of ancient Rome in many countries in cases on which the domestic law is silent.

Statute law.
Any other enacted law
Decisions.
Precedents of any other sort, as repeated measures.
Overruling decisions.
Interpretation.
Authentic interpretation.
Codes, digests.

LXVII. It is easy to see from this list what classes form the great bulk of laws, of which again infinitely the largest part emanate from society and are enacted by society, inasmuch as the wants, sense, and sentiment of society demand it, and nothing can resist it. Lord Somers, the distinguished Lord High Chancellor of England under William III., declared that he knew of no good law, proposed and passed at his time, to which public papers had not directed attention.

Perhaps it is necessary to say a word respecting one large class—namely, codes and written constitutions. They certainly seem to be distinctly enacted, given to, not made by, the people. A monarch, for instance Frederic the Great, promulgates such a code. First, did he make it, or was it digested by a variety of committees, composed of men who brought with them nothing more nor less than what they had acquired through life by the study of the laws of the land, and again from teachers, by practice, and under the hourly influence of society itself? They could not by possibility bring with them anything else. How shall a man act to remove himself *extra societatem?* Some laws were enacted in the code, which could not maintain themselves, and they were changed. Secondly, what is codification? Not the spinning of a thread from out the solitary brain of an individual. It is the collection, condensation, systematizing, and reconciling of what is scattered or contradictory; all that in a code which is not conformable to the spirit of society must fall to the ground. Men like Solon and Lycurgus did not make constitutions, like Condorcet, but rather collected them. This does not contradict the vast power of a great mind exercised over his community. That the latter acquiesce in or support what he proposes or does, belongs likewise to the sense and sentiment of the community; and they will not, cannot acquiesce, except where that great mind acts out, completes, develops, and elevates, without making the rash attempt to establish something absolutely foreign and heterogeneous. Even for engrafting a nobler branch we want some kindred tree. There is hardly such a thing as judge-made law, but only judge-spoken law. The doctrine pronounced to-day from a bench may, indeed, not be found in any law-book; but the judge has ascertained and declared the sense of the community, as already evinced in its usages and habits of business. If he has not expressed it correctly, society will show its sovereign power; his decision will be reversed to-morrow or corrected by a statute.

In fact, a doubtful decision is not unfrequently followed by a statute, either affirming or overruling it, as the judge may have succeeded or failed in expressing the public opinion. For example, the British public in Queen Anne's time were in favor of permitting the indorsee of a promissory note to sue in his own name. The judges ruled that it was contrary to the doctrines of the common law. Whereupon the public will to the contrary was declared in the statute of Anne. In former times a heathen could not be admitted as a competent witness, because he could not appeal to the God of the Christians. It was law, because a general and binding rule. Now this view is exploded; his conscience is appealed to through the solemnities of his own religion. And this is law, because a general and binding rule. Who enacted it? Society, by its power sovereign to all others. If the judge is not the true exponent of public opinion, be it that he misrepresents it, or that he truly administers the law, which law, however, is against public opinion, the latter will prevail, as has been said, by way of a new statute. A very curious case of this sort is within the memory of all of us. In England, in 1818. the trial of wager by battle was claimed by the appellee who was proceeded against by a writ of appeal, after having been acquitted of murder upon an indictment. The final judgment of the court was not given, as the appellant declined exposing his life in the contest, and prayed no further judgment of the court, and the appellee was discharged. (Thornton *v.* Ashford, 1 Barn. & Ald. 405 ; 3 Chitty's Blackstone, 337, n.) This appeal, which was held by the court to be warranted by the existing law, gave occasion for the statute of 59 George III. c. 46, passed 23d June, 1819, and which completely abolishes this mode of trial by single combat.

It is a very great mistake to consider the gradual changes of the law and its deviations of to-day from what it was a century ago, without the public action of a legislature, as being abuses which have crept in. It is society which demands these changes, and effects them ; it is these changes, according to the changes of things, in every country more important than the public enactments, which are partly but the consequence of the effected changes, partly receive value and life only by the change of the sense of the community, that make it possible for society to last. Or ought the German jural society, for the love of written law, to have continued all the revolting cruelties of the penal code of Charles V., despite the essential change of the whole nation?

We have not to inquire here whether a monarch theoretically stands above the law or whether princeps legibus solutus est; we shall return to this point. Here we have only to inquire, does any monarch, ever so absolute in theory, feel himself in any degree free from the vast bulk of the laws of that society over which he rules?[1] Where is the question more earnestly discussed, day after day, what may be done, and what cannot, than in the palace of the absolute monarch? How many thousand irksome things must not a monarch submit to for no other reason than because it is the opinion of the society of which he forms a part! Why is, as Eunomus said, "the little finger of the law heavier than the loins of the prerogative"?[1] What gives in all free countries such mighty meaning to the word law, and the more so, the more a country advances on the path of civil and political development? It was not without a deep meaning that, with reference to the late interesting case of Stockdale *v.* Hansard, the printer to the Commons, some British papers (June, 1837) headed the article, in which they gave Lord Denman's decision, which is against the printers for having published, under the direction of the house, certain documents containing a libel, "The Law versus the House of Commons." (See Am. Jur., No. 38, July, 1838.) The whole case belongs to the series of cases which are of historical importance, because representing and embodying a great principle, gradually developed by the struggles of many centuries.[2]

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[1] * We need not refer to free people only. It is a popular maxim of the Chinese, and one frequently quoted by them, that "to *violate the law* is the same crime in an emperor and in a subject. This plainly intimates that there are cer-

It may indeed be convenient in respect to some single measures to claim the absolute power of a monarch; but who will be bold enough to say that a monarch is not more subject, owing to the greater publicity and importance of his actions, to the fundamental laws and framework of society than others? The words of Coke, in the memorable debate, May 12, on the right of the king to imprison a subject, previous to the passage of the Petition of Right, that "Magna Charta is such a fellow that he will have no sovereign" (Rushworth, vol. i. pp. 562–579), contain a great truth and express what has been stated. The law comes from society, and therefore is powerful over

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tain sanctions that the people look upon as superior to the will of the sovereign himself. These are contained in their sacred books, whose principle is literally *salus populi suprema lex.*" Davis, The Chinese, i. 25.

[1] Wynne, who wrote about the middle of the last century.

[2] [See the account of Stockdale's actions for libel, etc., in May, Const. Hist. of England, i. 423–427.]

every one. That which strikes the senses most is generally considered the most important, and hence the delusion that he who proclaims the law or completes it by affixing his approbation is considered as the most important authority in generating the law. Yet his approval is powerfully influenced by society again, and how very small is that number of laws or bills over which the supreme power exercises a more absolute control, compared to the immense bulk of all those which are generated by society and form in every state the groundwork for the regulation of all laws! Does not all the law of a nation rest on usage? Must it not?

The same remark applies to revolutions. There are few revolutions indeed which enter so deeply as the first French did. Because the chief of the state changes, or his dynasty, we are apt to believe that a total change of things has taken place. Yet that which remains is incalculably vaster than that which is changed; that is, society with its laws remains master. The English revolution was not without essential changes, but if we consider how much remained of all laws which regulate the daily and therefore most important intercourse between man and man, we shall see at once that the changes are but a minimum.

LXVIII. 3. *Power.*—Where can possibly power be except in society? The question here is not even whether it is right that it is so, whether it ought to be so, but how else by the mere idea which the word power designates, sovereign power, power above all other power, can be imagined, except in society. Monarchs, a part of society, have of themselves but arms and feet like other men; and physical power, such as armies and navies, still more that power which they exercise by moral agents, must of course be lent them; that is, society forms the power, and may use it for one or the other purpose. Whatever opposes the power of society must yield; whatever society insists upon is carried, "by parliament, through parliament, or over parliament," as Mr. Macaulay, in the memorable debates of 1832, said of the Reform bill. Nor does society ever cease to consider itself as the object of itself —which is what I called the self-sufficient plenitude of sovereignty—and all its parts or separate functions, however elementary the character of their authority may be declared by the fundamental law, may vanish and yet not take anything from the sovereignty of society, which is natural, inherent, unavoidable, and imprescriptible, not made, granted, declared, or arrogated.

When the king of England was declared to have abdicated, which is nothing but an expression of constitutional terminology, or a fiction, in order not to use the harsher or to avoid debates on the plainer term of dethronement, the lords and commons did not believe British society had thereby lost any particle of its sovereignty, but they began the preamble of the Declaration of Right with the words, "Whereas the lords spiritual and temporal, and commons assembled at Westminster, lawfully, *fully*, and freely representing *all* the estates of the people of this realm," etc. Now, it is quite impossible that the lords and commons can represent the king according to the constitution; but they can, according to that which is above even the fundamental law—the sovereignty of society. So, whenever the commons are at variance with the lords on a point on which the former have distinctly formed their opinion and speak in the name of the country, the latter must necessarily give way, simply because the country or society has the power. The lords are a wise institution, under the law, but society is that which prescribes the law. Subjoined the reader will find a statement which is as true as it is interesting, coming as it does from a minister of the British crown himself.[1] Take on the other hand the case of an absolute monarch who becomes wholly unable to rule—by derange-

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[1] If the papers of the time have reported correctly, Lord John Russell, one of the ministers of Queen Victoria, said to the electors of Stroud, soon after his election, in the month of September, 1837, "At the revolution in 1688, the decision of the house of lords was, that James the Second should continue upon the throne, and that certain persons should be chosen to exercise the regal power in his name. The house of commons, on the contrary, declared the throne vacant. Therefore, had the house of lords persevered in their decision, a civil war must have

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been the result. But the lords, knowing their duty to the country, finding the house of commons determined, gave way, and William the Third was placed upon the throne. From that day to this, whenever the house of lords has fitly understood its duty, it has controlled what was hasty in the commons — has amended what was imperfect—discussed and matured what was not sufficiently considered; but whenever the house of commons, speaking in the name of the country, have formally declared their opinion upon a certain topic, the house of lords has not made itself a resisting body to that opinion. On two occasions it did so, but only for a very short time. In the reign of Queen Anne the policy pursued by the ministry with respect to foreign affairs was contradicted by the house of lords; but Anne immediately redressed the evil, and by the exercise of her prerogative quickly compelled them to agree with the house of commons. On the second occasion, a measure, supported by a vast majority of the people in every part of the country, was rejected, as essentially mutilated by the house of lords; but Lord Grey immediately took stringent measures to remedy the evil, and, although his proposition was not immediately accepted, the lords shortly afterwards gave up and retired from the proposition they had previously made. This is the real duty of the house of lords, according to the constitution of the country, and I trust that in the end they will become fully aware of it. At the same time it must be acknowledged that among the various alterations, among the various corruptions which were introduced into our constitution by tory ministers, who reigned supreme for upwards of fifty years, must be numbered that of pouring into the house of lords such a flood of persons of their own political opinions as to render that assembly the representative of a particular party rather than a sound constitutional body. I believe I am hardly exaggerating when I say that in the course of fifty years, in one way or another, sometimes by election, sometimes by nomination, sometimes by partiality in the creation of peers, not less than two hundred persons have been added to the house of lords. Of course the introduction of so large a mass of individuals, all belonging to one party, has in some respects changed the ,character of the house. But, whatever the amount of that change may have been, it has not entirely altered the sense which has always been entertained in the house of lords, that when the commons pronounce a decided opinion upon a great question, the opinion of the lords ought immediately to follow." So far Lord Russell.

" Whatever may have been the right of the nobility and clergy to attend in cortes, their sanction was not deemed essential to the validity of legislative acts." Prescott's History of Ferdinand and Isabella, 2d ed., Boston, 1835, page xlix., Introduction.

* On the other hand, in 1719, when Sunderland, Somerset, and others were anxious to get the Limitation bill passed, in order to keep the house of lords, after a few creations, from any further increase, Walpole said that "in all disputes between the lords and the commons, when the upper house is immutable, the lower must sooner or later be obliged to recede." It was at this time that

ment, for instance.[1] The heir presumptive declares himself regent, or monarch, and he is acknowledged as such. Any one who opposes his authority is treated as guilty of treason. On what ground? Because the heir declared himself such? His declaration cannot be the foundation of his right, because when he made the declaration he was not yet monarch, and therefore had no right to do so. Because the heir has the power to do so? That would be founding his whole right in force alone—it would be revolution declared permanent. Because the monarch is unable to rule? But who says so? The heir? There is no law which gives him the right of doing so; it would be a power above the supreme power of the monarch. His right can only be founded in the fact that

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the commons most strenuously opposed the intention of the king to divest himself of the privilege of creating peers. [From Dr. Lieber's notes, abridged. Comp. Hallam's Const. Hist., iii. 319, May's Const. Hist., i. 225.]

[1] * So, when the commons in 1788 had ascertained that George III. was deranged, Pitt moved three resolutions, in the second of which the same words are used, namely: "That it is the opinion of this committee that it is the right and duty of the lords spiritual and temporal and commons of Great Britain now assembled, and lawfully, fully, and freely representing all the estates of the people of this realm, to provide the means of supplying the defect of the personal exercise of the royal authority, arising from his majesty's said indisposition, in such manner as the exigency of the case may appear to require." Tomline, Mem of Wm. Pitt, vol. ii. p. 407.

And in the discussion upon this resolution Pitt used these momentous words, when Fox claimed the right of regency for the prince of Wales, as eo ipso belonging to him: "It was a right which could not exist, unless it were capable of being expressly and positively proved; whereas the right of parliament was that which existed of course, unless some other right could be proved to exclude it. It was that which, on the principles of this free constitution, must always exist in every case where no positive provision had been made by law, and where the necessity of the case and the safety of the country called for their interpretation. The absence of any other right was in itself enough to constitute the right of the two houses; and the bare admission that the right of the prince of Wales was not clearly and expressly proved virtually operated as an admission of every point which he wished to establish." Tomline, as above, p. 419.

See also Pitt's opinion upon the statutes in 13 Charles II., declaring that the two houses cannot act without the king, as evidently meaning when there is a king to act. (As above, p. 471.) The whole important debate is but one commentary upon the sovereignty of society.

he is supported by society, whom common sense teaches that a deranged monarch ought not to rule, and whose opinion, therefore, either shown publicly and directly or by acquiescence, gives him the right. He draws it from the sovereignty of society, which in the nature of things overrules everything else, and has done so as long as history remembers facts.

LXIX. Government is that institution or contrivance through which the state, that is, jural society, acts in all cases in which it does not act by direct operation of its sovereignty as mentioned above; or, in other words, government is the aggregate of authorities with all that is directly controlled by them. It derives its power from the sovereign power of the state—that is, I repeat it, from the necessity of the existence of society. Governments have been frequently changed, dynasties which wielded the supreme (not sovereign) power have been supplanted by others, or by republican governments. Now, has the displaced government ever taken with it the sovereign power? that is, has the nation, or state, left behind, become incapable of providing in every way for itself from its own self-sufficient or sovereign power? If the sovereign power rests in some one or something else than the state, then we have in the latter case two sovereign powers, which is absurd.

How many governments has the world seen within the last fifty years in France! Yet has France, the French state, that is, the jural society composed of all the French, ever ceased on that account? Was France in England when Louis XVIII. resided there, or England in Holland when Charles II. resided in the United Provinces? The following words of Erasmus, who surely was no revolutionist, apply to governments in general, and we must remind the reader here again of what was alluded to before, that to the unobserving the whole government seems to be changed when the dynasty only is changed, or the whole state seems to be changed when government only, perhaps nothing more than the executive with a few institutions, has been altered. Erasmus says (Instit.

Princ. Christiani, vol. iv. p. 566, F, Leyden ed., 1703), "Si torques, si sceptrum, si purpura, si satellitium regem faciunt, quid tandem vetat pro regibus haberi tragœdiarum histriones qui iisdem ornati prodeunt scenam?"

LXX. Governments may be established by a distinct conscious action of society (see farther below on Majority and Minority), and pronounce the right to change it whenever that society deems proper, as is the case in the United States. It must not, however, be forgotten that even in this case the state is not formed by a voluntary joining of previously entirely independent elements. Who settles first that such or such a convention shall be held, or that its decrees shall be binding? The state, that is, the society, exists already with millions of jural relations and laws; and the very government which is newly established springs from and rests upon the previously existing relations of right. The radical error by which government and state are confounded has led to many very serious misconceptions, of which the chief is that which relates to the origin of the state, and to consequent obligations of its members. Men have been obliged to resort to a variety of fictions. Thus, Rutherforth, who merely copies his predecessors, says (Instit. of Nat. Law, book ii. chap. i.), "A society is a number of men united together by mutual consent, in order to deliberate, determine, and act jointly for some common purpose"—thus designating only what we have termed an association, which, as has been seen, does not apply to the state, for when was this mutual consent pronounced? Is Russia not a state? Yet there is indeed no deliberation. Much as we may disapprove of many acts of the Russian government, no one can deny her to be a state. Rutherforth then endeavors to make out that acts of the whole are binding upon each, and, without argument or proof, he passes over from the whole to the majority, in this way: "Whatever is determined by the whole *or* by the greater part." This is not establishing rights. There are a few cases in history which approach very much to the above presumed formation of the state, as that of the Providence colony, of which more will be said, but they are extremely rare cases, and besides do not solve the question of sovereignty inherent in society, by the political fiction of mutual agreement. The state is natural, necessary, uninvented.

Or the government has grown up within the society without any specific act of rebeginning, but by many distinct expressions or acknowledgments of its most essential features, or with the distinct acknowledgment of certain mutual relations between the government and the state, as is the case in England. With regard to the latter, I instance the act of settlement or bill of rights.

Or the government has grown up within the society without any public and definite expression of its relations to the state, and has perhaps itself greatly co-operated to form that state, and receives the support of the people, as is the case in Prussia.

Or the government is forced upon the people, as was the case, for instance, with the kingdom of Westphalia, founded by Napoleon, and given by him to his brother Jerome; or the people have never yet reflected on subjects of right, and live in a low state of political civilization. In the first case, society is the acknowledged source of power; in the second, the source is more distinctly acknowledged by every act of the nature alluded to; in the third, it is clear that government derives its power from society, which supports it, and which government rules in a manner to obtain this support. If the people were to rise against it, and to establish another one, the question would arise, which I have answered already in this paragraph, Does the government take the sovereignty along with it? The change once effected, who would deny the new government the lawfulness of its actions? In the last case, who imposes the government? At the beginning, it may be an entirely foreign army, or foreign money, by which a sufficient party is bought to support it. But can this last any length of time, without at least the acquiescence of the people? The question always turns upon this point, Does the state accept the government, or the government the state? The answer is clear. The government is obliged, do what it may, to adopt the immense mass of existing jural relations and their corresponding laws.[1] If we take the Barbary States as an example, where a soldiery recruited by foreigners rules with iron sway over the people, we shall find one of two things. Either even there the people acquiesce for the time in it, because they prefer this vicious government to the personal dangers to which an attempt at change would expose them—and though I may have a right to do a thing, it may be inexpedient, and, in many cases, wicked, in consequence of inexpediency, to make use of the right, if I expose thereby inconsiderately many of my fellow-beings to danger—or the power of the soldiery effectually prevents all attempts at change. If the latter be the case, then it is a state of things entirely founded upon brutal force, which prevents for a time the sovereign power from acting, as brutal force may prevent almost any power from acting. Every institution must go through a transition-state at some period of its development. If an opponent were to object, "Still, is it not a state?" I would say, "Hardly; but be it so, would any one, even the stanchest legitimist, deny the oppressed the perfect right to free themselves?" Destroy that government, if government you can call it, and the dey, with his adherents, will not take the sovereign power with him, but the freed people will at once exercise it. All human institutions, all great ideas, develop themselves gradually, per intervalla ac spiramenta temporis, and whenever society chooses to act, it can do so, and has the right to provide for what is necessary for itself.

LXXI. As soon as the strictly patriarchal government ceases, we find that the chiefs, sheiks, kings, or whatever they may be called, are most generally eligible, or the people elect them whenever they choose. Strictly hereditary governments, with a fixed line of descent, are but of late origin, gradually established by acquiescence, or according to some particular views prevailing at the time, *e.g.* that of inheritance in general in the feudal times. (See Palgrave's Anglo-Saxon Commonwealth, and Turner, History of the Anglo-Saxons, viii. 1.) The descent of the crown by primogeniture is of but very late origin. The less the king became a mere feudal chief, and the more he came to be considered as the head of the government of society, in short, the more clearly the idea of the state rose out of the feudal system, the more the indivisibility of the state became necessary, and the more clearly did people see that an elective monarchy is that government which offers, in most, perhaps in all cases, the least advantages of all. In Russia the czar is still held to have the right of appointing his successor. In England parliament has the acknowledged right of the settlement of the crown. But nowhere does history show that there is some divine right connected with the descent of the crown. Philip II. of Spain endeavored to exclude Don Carlos, his son. Was it a divine right in Philip to settle the succession? Carlos, the pretender, in 1833, declared that Ferdinand VII., his brother, had no right to change the succession; he, therefore, according to Carlos, cannot have been sovereign in the full sense of the word. Frederic William I. of Prussia contemplated the exclusion of his first-born son (Frederic the Great) from the throne. The sovereignty cannot reside in the reigning family, because the descent of the crown is variously regulated by law; this law then regulating the descent of sovereignty must be superior to it, it seems; then it cannot be sovereignty. In some countries the crown descends from male to male only, in others the women are included, yet the elder female giving way to the younger male in direct line; and when Captain Cook visited Otaheite he found that the law of the land was, that the king ruled, the moment a son was born to him, merely for the latter, who assumed the government as he became of age, whether the father was living or not; in other countries, again, the monarch is elected.

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[1] * In no case does this appear clearer than in conquests, and in none of these perhaps so palpably as in the conquest of China by the Mantchou Tartars. They were able, indeed, to change the costume of the Chinese, to cause them to shave their heads in Tartar fashion; but observe how the Tartars became Chinese, not the Chinese Tartars — language, law, tradition, politics, religion, industry — of everything the great bulk remained. Every conqueror is swallowed up, as it were, by the conquered. Alexander became an Asiatic.

LXXII. When the German emperor had been elected by the seven chief princes of the empire, called electors, he showed himself to the people, who were asked whether they would have him. After they had exclaimed, *Fiat! fiat! fiat!* he was crowned. This had become, of course, a mere form, but it shows sufficiently the original view taken of the power of the emperor, or the theory upon which it was founded. (See section lix. of this book.) Endless, indeed, would be the instances to show that from earliest times the view was taken that rulers had their power from the people, that it is a vested and conditioned, not a primordial power, forfeited if the condition is not fulfilled. Thus, in Aragon the formula, "as long as thou performest that for which rulers are appointed, and if thou not, we not" (*y se no, no*), and that in Sweden, "we will remain faithful to the king, and keep our oaths, provided he do so,"—used at the diet of Süderköping in 1595,—prove that society felt itself justified in making changes in government when the holders of supreme power used it to the essential disadvantage of society. Many persons call this the doctrine of revolution, because the people may often think that government acts wrong, when, in fact, it acts most wisely, and that all stability of government, so important to society, would be undermined if society could change it whenever it deems proper. Apart from the fact that, whether pleasant or no, dangerous or no, such is the fact, founded in the very nature of things, it need only be suggested, whether indeed the theory that kings have a right of their own, no matter whence it comes, and that they do not owe their power to the people, is not far more revolutionary and dangerous to the stability of governments. People, history shows, are not so easily movable as individuals, nor can they be; and where, indeed, is any guarantee that the monarch, a frail individual after all, like all the rest of mortals, will not abuse his power, nay, will not be obliged to abuse it, because he is finite and subject to all the influences of humanity, united with a high degree of power?[1]

LXXIII. From the foregoing it will be easy to judge in how far Hume was correct when he said that opinion is the first foundation of all power.[2] It is, questionless, true that a monarch of himself can do nothing; he may effect much against the true interest of the people, by an army and money. But who compose this army? who gives the money? The first cannot be drawn together by the physical force or any supernatural power of the monarch, nor can the latter be extracted from the people by any such means. Consent, from whatever source it may flow, is requisite; for of himself the monarch is but a human individual, like any other mortal being, as we see at the moment when consent or support is withdrawn, if any doubt could exist. A state may, indeed, for a long time, be organized like a man-of-war, on board of which the marines are used to keep the sailors in due order, and to watch over them if in irons, and the sailors must keep the marines subdued should they become mutinous. But what could the captain and all the officers effect, if at heart the crew's opinion were not with them? Would they not be thrown overboard? If, however, by opinion we mean something of which we are clearly conscious, in this case an avowed and positive assent, and not only the absence of dissent, the expression is not so correct. States exist long before men come to a clear perception of the character and necessity of the state, as we have seen, because they cannot live without right, without law. Be it, however, granted that opinion is the first foundation of all power, it remains still to be explained whence opinion receives the authority to establish that power. Opinion is the support of all vested or secondary power, and a mighty one indeed, as has been seen, it is of itself. But the first source of all power is sovereignty.

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[1] A lately-published work by Mr. Michelet, *Origines du Droit Français*, contains many passages interesting in regard to the subject treated of in the above section. It is always pleasing to find an important theory unequivocally and succinctly pronounced, be it in words or symbols, and I do not hesitate to quote, on that account, the following passage:

"The duke of Carinthia was not allowed to sit upon his marble throne till he had given money. This donation was the *coemptio*, the purchase of his right. Nowhere does the sovereignty of the people (as a sleeping abstract annunciation) appear more haughtily declared than in this formality. It bears the seal of a remote antiquity, of an Homeric or Biblical simplicity. The duke walked towards the marble throne in the dress of a peasant. But a real peasant already occupied it, attended by the sad and severe symbols of the laboring people—the black bull and the lean horse. Then commenced this rude dialogue. 'And who so proudly dares enter here?' said the peasant. 'Is he a just judge? Has he the good of the country at heart? Is he born free and a Christian?' 'He is, and he will,' answered the duke. 'I demand, then, by what right,' retorted the peasant, 'he will force me to quit this place.' 'He will buy it of you,' was the answer, 'for sixty pennies, and the horse and the bull shall be yours,' etc. No less ancient or deeply significant was another part of the same ceremony. Whilst the duke brandished his sword towards the four winds, whilst he sat with his face to the sun and conferred fiefs, three families had a right to mow, to pillage, and to burn. The interregnum of the sovereign power was thus represented as the sleep of the law; and the people saw in this form that they must make haste to abdicate and to give themselves a defender." [See J. Grimm, Rechtsalt., 1st ed., p. 253.]

[2] Essay IV. of the First Principles of Government.

LXXIV. Had the terms state, government, sovereignty, supreme power, and other important ones in political terminology been always used with precision, or had it been possible, according to the existing stages of civil progress, strictly to discriminate them, far less dispute with regard to the true source of power would have afflicted mankind. Attention is first attracted by outward, prominent marks, and the supreme power may well be called the prominent, outward mark of the state. It was natural, therefore, that this should be frequently taken for the sign, attribute, and essence of the state, and that great confusion should exist respecting the persons who wielded this power, the power itself, and the state for which it is wielded. But if the government is not the monarch, the monarch not the state, if " the state will endure" though Louis XIV. may die, it clearly follows that sovereignty is an attribute of the state, not of the monarch. Many circumstances have contributed to increase the confusion, even the origin of the word sovereign. Sovereign (from the French, a word to be found in all the idioms of Latin origin, as if from *superanus*) meant, originally, highest, excellent, and was the same with supreme.[1] It was applied therefore to the monarch, as highest, chief, especially in the feudal times, when the king or prince was not monarch in the sense in which we take the word, but the chief one, the leader, frequently the *primus inter pares*. Thus, prince, from *princeps*, the first, chief one, the German *Fürst* (which meant originally what the English *first* now signifies, and is the superlative of *vor*, pronounced *fore*, the English *before*, meaning therefore the *foremost*, the highest, so that actually in the ancient Mirror of the Suabians, a collection of Suabian law, chap. cxv., *Princeps* and *Fürst* are explained by *vorderst*, *i.e.* foremost), the Swedish *Förste*, Danish *Fyrste*, and Dutch *Vorst*, all lead to the same original idea. The meaning was plain and simple, just as *dux* or *duke* and *Herzog*, without any mysteriousness as to the extent or origin of the power. Religion, as embodied in the church, and not only as the spiritual life of the individual, being the main moving principle of the middle ages, and penetrating every form and substance, became the cause that ideas drawn from the Bible were carried over to the crowned heads of Christianity. They came to be called the anointed of the Lord, as the kings of Israel were.[1] The essential character of the Israelitic government was theocratic, and it seems that Moses was not desirous of establishing a monarchy (Deut. xvii. 14–20). But, the theocratic government having almost entirely decayed after Joshua, the people asked Samuel to give them a king. He yielded with great reluctance (1 Sam. viii. 5–22). The king, being called to the crown by theocratic choice, was considered the vicegerent of Jehovah, yet his regal authority was limited by the terms of election, the ancient liberties of the people, and the constitution of the tribes.[2] These theocratic peculiarities found, as far as the altered state of things admitted, a ready reception, and though the supremacy of the church and absence of national churches did not allow the idea of the monarch's responsibility to be extinguished, yet some most extravagant ideas grew up. Charles IV., emperor of Germany, declared that the souls of princes are better endowed by the Lord than those of common people, and that, too, when he recommended so unworthy a subject as his son Wenceslaus to the princes to be elected as his successor. The anointing of monarchs was believed by many to establish a more direct communion with the Deity. Indeed, there is no accounting for the strange views to which people may be led. Pope Alexander VII. preferred to promote persons of good birth, because he thought that as princes of the earth like to be served by individuals of high families, it must be likewise pleasing to the King of kings to be served by priests already by their blood above the rest of men. (Ranke, Die Röm. Päpste, book viii. § 10, vol. ii. p. 194 of Amer. ed. of Austin's translation.)

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[1] Thus, we say still, "sovereign contempt," "a sovereign remedy." The French Dictionary of the Academy gives the following definition of *souverain:* ce qui *est au plus haut point en son genre*. It speaks of souveraintě absolue, limitée, héréditaire, etc. Consequently, it means nothing but supremacy, supreme power. The *Nouveau Dictionnaire universel des Synonymes*, etc., by F. Guizot, Paris, 1833, distinguishes between *souverain* and *suprême*, that the idea of power belongs to the first, and of any elevation to the highest degree to the latter. "God," it says, "is the supreme being, since he is the being by way of excellence and by essence; he is the sovereign lord of all things, inasmuch as he is almighty and author of all things." The ancient parliaments in France, the highest judicial courts, were called *cours souveraines*. There existed in Holland, in the fifteenth century, certain societies of poets, or, at least, rhymesters, then called rhetoricians. Philip the Handsome united the various societies or "chambers," in the year 1499, and appointed a chamber of fifteen, called "Jesus with the Balsam Flower," as "sovereign chamber," and the chaplain of the prince was made its "sovereign prince." Van Campen's History of the Netherlands Hamburg, 1831, vol. i. p. 317.

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[1] * With this view of inherent legitimacy is connected the superstition of the monarch's curing by touch. In France the formula was, "The king touches thee, God cures thee."

[2] Manual of Hebrew-Jewish Archæology, by W. M. L. de Wette, D.D., Prof. of Theol. in the Univ. of Basle, 2d ed., Leipsic, 1830, division *Royalty.* The Bible, if not taken as a book of religion and history only, may very naturally be abused to prove anything and any theory. It is always so when we confound distinct spheres. The solar system, with its many stars, has been used to prove monarchy, nobility, and people to be an order of things founded in nature. From the passage in Luke xxii. 38, "Domine, ecce gladii hic duo: ille autem dixit eis, Satis est," it was proved in the middle ages that the two powers, the pope and the emperor, must rule over all Christendom. There is nothing that cannot be made to support anything, if we once resort to what I have called, in the Hermeneutics, *ex post facto* interpretation. Every sort of government has been recommended as the most pleasing to God, because founded upon or copied from the Bible, from the theory of the divine right of monarchs to the harshest democratic extravagance. Nor have the aristocrats remained behindhand. Scheele, a Dutch nobleman, in the middle of the seventeenth century, supported his defence of aristocratic government, in his two works De Jure Imperii and Libertas Publica, as much by passages of the Bible as by political reasons. Who does not know the contradictory results in politics at which the various parties during the English revolution arrived, always deriving, as they pretended and sometimes sincerely thought, the truth of their theories from the Bible? We might with equal justice derive our penal law, architecture, or the theory of any science or art from it. I have already on former occasions referred to Archbishop Whately's remarks respecting this unhallowed abuse of the Bible, in his Introductory Lectures on Political Economy, London, 1831, page 29, et seq.

When whole kingdoms, however, had become Protestant, the Jesuits, for the first time in history, distinctly pronounced the sovereignty of the people. We shall see how they were led to it. It was now for the Protestants to claim the entire independence of monarchs, and in some cases they went to a most extravagant idea of divine right. The idea that wherever there is an established church it ought to be under the superintendence of the state, else it would be in reality a state within the state, and a contradiction in terms, for who establishes? certainly the state, by which is given already the foundation of the relation in which both must stand—led the Protestant monarchs to declare themselves the heads or supreme bishops of their respective national churches. It led them to do it, though it is by no means necessary. This, together with the gradually vanishing power of the pope, as the national governments rose in importance and power, and as the stream of civilization, industry, and consequent strength passed from the southern European nations to the northern, was a cause of a new theory of the divine right of kings, and unlimited power, which from the times of Filmer and

Wandalin down to but recent periods has been, at times, pronounced with a degree of absurdity which can only be accounted for by all the surrounding circumstances of the time, and is, taken without them, utterly inconceivable. This extravagance is rapidly fading away, and even Chateaubriand asserted in one of his speeches in the chamber of peers, after the revolution of 1830, "I do not believe in the divine right of kings; monarchy is no longer a religion; it is a political form." The duke of Fitz-James, whose political views were solely formed upon the antiquated theories of French royalty, himself having followed the Bourbons into their exile, and being believed to have stood in the relation of consanguinity to his royal master Charles X., waived the idea of divine right, in the chamber of peers, on April 19, 1831, and appealed to the people, with a view to establish the right of the duke of Bordeaux to the French throne. Before the last revolution, it was not uncommon among the French royalists to speak of a *culte de la monarchie*, meaning a veneration approaching to worship of monarchy, with all the expressive symbols, if not entire worship. We, at present, must carefully distinguish between sovereignty and supreme power, and, though etymologically the same words, we have as much right to distinguish between them as between royal and regal, and so many similarly related terms.

LXXV. We are told that kings are of God. So they are, if good, and where monarchy is the best government for the given circumstances; because it is the will of God that man should live in a state, and consequently have a government. But surely the people are of God too, and, what is more, they are ends for which governments are but a means. Nor can it be seriously maintained that every monarch that ever ruled has been such by the special direction or appointment of God. Was every Chinese emperor, every sultan, every African king, every Indian chief, specially appointed by divine interposition? They are not civilized, it is perhaps objected. Were Caligula and the long train of equally insane Roman emperors of God? They were not Christians. Then, was the Austrian line of rulers in Spain, was the Bourbon line in that same country, of God? Why should we pronounce blasphemies? Were James and Charles I., with their Buckingham, of God? Were Charles II., Henry VIII., lewd Elizabeth of Russia, Charles IX. of France, Louis XV., Pope Alexander VI., was the lately expelled duke of Brunswick in his madness, of God? He was; but so are wolves in the forest. Was Napoleon of God? If so, when did he begin to be so?

If, however, the expression means only that they were monarchs in consequence of a combination of many laws of the universe, then it means nothing, because then everything is of God, and we need not assert this of monarchs especially. Nor do I maintain that many dark pages of the history of the people cannot be mentioned: all I desire to say is, that nothing can be established in this way. If there is anything mysterious about the monarch, something by which sovereignty is personally and indelibly attached to him, then, I repeat, Charles X. must have taken it in 1830 to Holyrood Castle, and France was from that moment incapacitated to be a state and perform all necessary acts of sovereignty. Yet when Louis XVIII. returned to France in 1814, all laws which were not specifically abolished remained in force, and even the pension of Robespierre's sister continued to be paid.

Great Britain did not acknowledge Napoleon as emperor; yet did she on that account consider Louis XVIII., when residing in England, as sovereign? Would not any grand jury have found a true bill against him had he transgressed the laws? There is undoubtedly some indistinct idea that sovereignty once enjoyed prevents the individual from ever becoming an entire subject again, and kings who abdicate continue in many cases to enjoy the title of majesty; but I do not speak here of matters of courtesy. Christina II. considered herself still a sovereign after having abdicated the crown of Sweden, and her execution of Monaldeschi was founded upon this idea. With her the notion was peculiarly wrong, because she acknowledged her successor. She certainly therefore could not be sovereign of Sweden. Of what was she then sovereign? Was she sovereign in her own person, without any reference to any country? then why was she not sovereign from the moment of her birth, rather than when her father's crown devolved upon her? Until we can find individuals who are, somehow or other, sovereigns within themselves, without reference to anything without them, sovereigns of themselves, and not as rulers over a country, we cannot believe in the sovereignty of persons.

LXXVI. If there is a legitimacy personally in the monarch, and not in the laws willed or suffered by society, then how does it happen that England, France, Portugal, Brazil, Sweden, Holland, Prussia, Spain, Russia, Belgium, Brunswick, are ruled by monarchs who hold the sceptre, or rule according to fundamental laws, established in consequence of revolutions, or have seated themselves upon the throne by force? How did Russia acquire her right to rule over the Cossacks, who were severed from Poland by a revolution? Yet all these monarchs considered themselves, and generally are considered, lawful rulers.[1]

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[1] The government of England was settled by the "glorious revolution of 1688." The present dynasty of France was elevated upon the throne by the revolution of 1830. The house of Braganza obtained the Portuguese crown by the revolution of 1640 against Spain, when John, duke of Braganza, was made King John IV. of Portugal. Brazil was raised into an independent empire in 1822, by a revolution which declared Don Pedro, son of the king of Portugal, first emperor. In Sweden, a revolution in 1809 forced Gustavus IV. to abdicate for himself and his descendants. His uncle Charles XIII. was made king, and when the elected crown prince, the duke Charles Augustus of Augustenburg, died, in 1810, the French marshal Bernadotte, Prince of Pontecorvo, was elected crown prince. He ascended the throne in 1818, under the name of Charles XIV. John. The reigning house in the Netherlands are the descendants of the great William of Orange, the Silent, who directed the revolution of the Netherlands against Spain in the sixteenth century. Prussia Proper, which became the foundation of the kingdom of Prussia and gave it its name, was made, in 1525, a hereditary dukedom by the revolution of Markgrave Albrecht, elected master of the Teutonic

There must, then, be something beyond them, which keeps them in those high stations; it cannot be inherent. It is the state, which is infinitely above the monarch, which can see race after race pass away, and yet remain the same. Many enlightened monarchs have well penetrated the character of their office. Frederic the Great of Prussia, in his work on the Forms of Government, calls the king "the first servant of the state, obliged to act with probity, wisdom, and perfect disinterestedness, as if at every moment he should give account to his fellow-citizens." (Frederic's Works, 1788, Berlin, vol. vi. page 84.) He speaks repeatedly of the fellow-citizens of the king; it is not an inadvertent expression, nor an over-modest one, as some late German philosophers, desirous to theorize the mysterious character of the word "sovereign," have called it. Frederic says in the same work, "the citizens have granted pre-eminence to one of their equals only," etc. Joseph II., emperor of Germany, and hereditary prince of the whole

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order, one of the Catholic orders of knights, who so remarkably united the characters of conquering knights with clerical vows. The country was not his, nor the government hereditary. He became Protestant and usurped supreme power. This is not the place to investigate what radical changes such mighty events as the Reformation may render necessary: all that is maintained is that Albrecht became duke of Prussia by high-handed revolution. (Stenzel's History of the Prussian States, in Heeren & Uckert's Series, Hamburg, 1830, vol. i. page 292, et seq.)

The ruling race of Spain occupies the throne in consequence of conquest, for the decision of the war of the Spanish succession between the Bourbons and the house of Hapsburg, in favor of the former, can hardly be called anything else. In Russia, Catharine II. made herself empress by a revolution against her husband Peter III., who was killed. So was Ivan, who had the next claim upon the throne, according to the rules of hereditary descent of crowns. Her son, Paul I., was deposed and killed in 1801, and succeeded by Alexander I. In the middle of the seventeenth century the Cossacks revolted against Poland and threw themselves into the arms of Russia, to which empire they have ever since belonged. Belgium was severed from the kingdom of the Netherlands by a revolution in 1830, and constituted into a kingdom, calling Prince Leopold of Saxe-Coburg to the throne. William, the reigning duke of Brunswick, succeeded by a revolution in 1830 his elder brother Charles, who had committed most surprising extravagances, illegal acts, and cruelties, acknowledged as such by the neighboring governments as well as by the king of England, who repeatedly endeavored to bring him back to reason.

Austrian monarchy, called himself the first subject of the state. (Mémoires du Prince de Ligne, Paris, 1827, vol. i. page 237.) He knew, too, that the monarch is for the people, not the people for him. When on his death-bed he said to Prince de Ligne, a native of the Austrian Netherlands, which just then were in rebellion, "Go to the Netherlands; make them return to their sovereign; and if you cannot succeed, remain there· you must not sacrifice your interests to me; you have children." (Ibid., vol. i. page 236.) Had not so untenable and undefinable a view of the inherent character of the monarch been taken, man would never have thought of claiming for him a position above the law, which it has been shown he never can, in reality, occupy.

There have always been flatterers who would please the ears of kings with these ruinous theories. Anaxarchus declared to Alexander, after he had killed Clitus, "by the throne of Jupiter and of kings sits Themis and stamps their arbitrary will into what is right." Even without a veto? Pliny's simple "non est princeps supra leges, sed leges supra principem," can never be obliterated or changed. "Nihil aut æquius aut tutius, quam ut regnet rex secundum leges moresque veteres." Grotius, Epist., pars i. ep. 1431, dated October 27, 1640.

The Romans knew the difference between supreme and sovereign power well. "The granting the full franchise," says Niebuhr (Roman Hist., vol. ii. page 299, Amer. ed.), "to municipal towns was so strictly deemed an act of the sovereign power, that the tribunes in the sixth century would not so much as allow the senate the right of proposing it." Who was the state when Philip II. of Spain declared, upon the decision of the Inquisition, that all the inhabitants of the Netherlands were guilty of high treason,—that those, therefore, who did not fall under the executioner's axe enjoyed their life by royal grace alone?[1] Philip, or the people?

LXXVII. Yet the monarch of Great Britain is called the sovereign, and various maxims in the British constitutional law, such as, "the king can do no wrong," "he is the fountain of honor," "every British subject owes indissoluble allegiance to him," seem, at first glance, to express something of that power of powers, that self-sufficient source of all power, which has been designated in the course of this work as the great attribute of sovereignty. But is it so in reality? Are the maxims just mentioned substantial truths, that is, truths on which we can farther build, or from which we can deduce farther truths as binding as the first proposition, or are they rather constitutional technicalities, framed and worded to complete a system, to give it that logical symmetry which gives at least an apparent finish and absoluteness to a system, and for the sake of which we find that in all the fabrics which human reason has reared in the various theories of science and dogmatics, men have resorted to so many fictions? The difference is important, and, unfortunately, frequently forgotten. If a position be a truth in itself, we may draw legitimate consequences from it; if it be an illustration, a summing up of what has been stated by way of simile, then we must stop with its statement, or we shall expose ourselves to the most dangerous argumentation. For a simile, even the best, carries always along with it, not only that which applies to the given case, but also that which does not, and if we assume the simile itself as full and complete truth, the latter will be taken to be ground of truth as well as the former.

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[1] Meteren, History of the Netherlands, folio 49.

If the British commentators upon constitutional law had always used the word crown, instead of king or sovereign, respecting those important maxims, the danger of confounding the king's personality with his political authority would have been avoided in a great measure. Others would have borne much more the stamp of truth. Thus, it is said, "the king never dies," while it is meant that the crown never dies, or does not follow the head which wore it for a time to the tomb, because all individuals must die, all hands, even those that grasp a sceptre, are grasped in turn by the cold hand of death, but Britain dies not. The crown has always a living brow to support it, is the true and unparadoxical meaning of the maxim, "the king never dies." All members of parliament must die, but parliament dies not. In short, "the king never dies," means that the chancery does not die with the chancellor, the fleet with the admiral, the bank with the director, the city with the mayor, the people with their ruler, and no more.

As to the oath of allegiance, I have treated of it already. The queen Victoria, in some of her late communications to the two houses, respecting the Canadas, speaks of "my provinces," "my colonies." Now, there is probably no Englishman living who would pretend that the pronoun "my," which, as has been mentioned in a previous chapter, is used to express an infinite variety of relations between two persons or persons and things, expresses in this case, used by a young lady of eighteen years, the same meaning as that in which she applies it daily—for instance, to household articles. The English believe not only that monarchy (not "surrounded by republican institutions," but *forming*, indeed, to all intents and purposes a great republic; for which of the two, George III. and Pitt with the parliament, was substantially the ruler, and which became the executor of the other's will?) is for their given circumstances far the best government, but also that, upon the whole, the order of succession by which females may obtain the crown in default of male issue is more convenient for them than any other would be; but so good an authority as Dr. Lushington lately said in the commons, with regard to a suggestion of his that the king of Hanover might be excluded from the succession, "The line of succession, as well as the constitution itself, was framed for the good of the people, and if the existing law ceased to be operative in that respect, then it came for the consideration of parliament what was to be done." (As quoted by the papers of the day.) The queen, in her first proclamation, said, "By the death of his majesty, my beloved uncle, has devolved upon me the duty of administering the government of this empire. This awful responsibility," etc. There is nothing about her being the owner of England; in short, she succeeds to the crown, that is, to supreme, but even that far from being unlimited, power. There cannot be now an Englishman who pretends to maintain that there is a peculiar quality, called sovereignty, inherent in the monarch, and that what in England is called sovereignty is essentially something founded on a relation between the individual whose brow supports the crown and the people. Startling as the declaration that " a people may be without a king, a king cannot be without a people" (Journals of the Commons, vol. i. p. 156) may have been for some persons under James I., it is now too well established a truth to detain us any longer. " Do not imagine," wrote Frederic the Great to the young duke of Würtemberg, who had been educated under his eyes, in his Monarch's Mirror, handed to the duke on the day of his departure from Berlin (1744), " that Würtemberg exists for you, but believe that Providence has placed you in the world to make the people happy."

I have seen it stated, indeed, that the schoolmaster is likewise for the school, and not the school for the teacher, yet that it would be senseless to claim for the children the right to prescribe rules for the teacher. All that is to be answered is, that men are not children, and children not men, and that there exists this slight difference, that the children without a master form no school, but the people without a monarch are still a people, and that that which makes the king a king, the ruling, may be done sometimes by others ; or have the Swiss, have the Americans, had all antiquity, no governments ? Are we all lost sheep without shepherds ?

According to the principle laid down in this work, that we must learn the true nature of a thing from its most perfect or most developed state, and not from its incipient stages, still less from stages of corruption or violent distortion (" Non in depravatis, sed in his quæ bene secundum naturam se habent, considerandum est quid sit naturale." Aristotle, Polit., lib. 1), we are not bound to go to the most distant or the most despotic periods of English history in order to understand its true character. Yet even if we pursue this plan, which was the one that Hume proposed to himself, we shall find that the British monarch was never considered as possessing those attributes without which no clear idea can be connected with the term "sovereignty," as has been successfully shown by Mr. Brodie, in his learned History of the British Empire, especially in the first volume, a work of great value for constitutional history. As to the later times, I refer the reader to Hallam's Constitutional History of England, and to Blackstone, i. 192, et seq., and iv. 440. I shall only cite here part of a law of 25 Henry VIII., c. 21, from Sir Edward Coke, copied from Brodie, i. 286: "Wherein by authority of parliament it is enacted and declared (directing this declaration to the king), that this your grace's realm, recognizing no superior under God but only your grace, hath been, and is, free from subjection to any man's laws, but only to such as have been devised, made, and ordained within this realm for the wealth of the same, or to such other, as by sufferance of your grace and your progenitors, the people of this your realm have taken at their free liberty, by their own consent, to be used amongst them, and have bound themselves by long use and custom to the observance of the same, not as to the observance of the laws of any foreign prince, potentate, or prelate, but as to the customed and ancient laws of this realm, originally established as law of the same, by said sufferance, consents, and customs, and none otherwise."

If the Declaration of Rights of 1688 is not a declaration of the sovereignty of society, then we really do not know what the instrument means, and what particle of right to the crown William and Mary ever had. But it is asserted by tory writers, for instance in the Book of the Constitution (Glasgow and Edinb., 1833, p. 121), that had the British possessed the right to choose their own governors, "it is clear that the English nation did at that time (1688) most solemnly renounce and abdicate it, for themselves and for all their posterity forever," because a subsequent clause of the Bill of Rights says that "the lords spiritual and temporal, and commons, do, in the name of all the people aforesaid, most humbly and faithfully submit themselves, their heirs and posterity forever," etc. Now, the question is, what is the meaning of the term "forever" in politics? Has it an absolute meaning, or has it only a meaning under and within that sovereignty which is above all and everything? History proves that the latter is the case; else there could hardly be an organic change of any government. However, I waive the argument which lies in the total want of right in one generation absolutely to bind another, and prove my point from the Declaration of Rights itself. The people of England submitted themselves "forever," that is, as will be admitted, on the terms declared in that bill. It is distinctly expressed. Now, that same bill says, in paragraph x., that every king or queen shall, on taking the coronation oath, "make, subscribe, and audibly repeat the declaration," mentioned in the act 30 Charles II., entitled, "An act for more effectually preserving the king's person and government, by disabling papists from sitting in either house of parliament." This, too, was "forever;" yet Catholics do sit in the two houses since 1830, despite the Bill of Rights itself; and it was a tory administration under which this organic change took place.

This paragraph may fitly conclude with the words of Lord Lansdowne, spoken after he had been premier, on December 26, 1788, when the regency question was under discussion:

"The principles laid down at the revolution make the crown to be, not descendible property, like a pig-sty or a lay-stall, but a descendible trust for millions and ages yet unborn. I contend, therefore, that the hereditary succession cannot be considered as a right. It is a mere political expedient, capable of being altered by the two houses. In cases of exigence, they have always been termed the legislature, in order to prevent the greatest of all possible evils, a disputed succession."

He also said, "The people, my lords, have rights. Kings and princes have none. The people want neither charters nor precedents to prove their rights; for they are born with every man in every country, and exist in all countries alike, though in some they may have been lost. I wish, therefore, that the question of *right* to exercise the royal authority, which has been claimed and asserted, may be decided; in order that those who suffer oppression under governments the most despotic may be taught their rights as men. They will then learn that though their rights are not, like ours, secured by precedents and charters, yet as soon as they assert their rights they must be acknowledged."[1]

LXXVIII. The king can do no wrong, the king is the fountain of honor, are precisely in the same sense true and not true, as the preceding maxim, that the king never dies; that is, they are fictions or metaphoric expressions, and therefore incapable of sustaining any argument to be deduced from them, but merely expressing an idea already established, and only so far as established. Blackstone distinctly claims the same inability of doing wrong for each branch of the legislature (i. 244). They are, then, no peculiar attributes of sovereignty, using the term as applying to the person called by the English law sovereign. Besides, we know that the king, even constitutionally, can do wrong, and can be declared to have done so, as was the case in the Bill of Rights respecting James II.; that there is a "superiority of the laws above the king" (Blackstone, iv. 440); that the British law "confirms the doctrine of resistance when the executive magistrate endeavors to subvert the constitution" (Ibid.). Everything *cum grano salis.* Even the Catholics themselves, when the infallibility of the pope was received in a far wider meaning than at present, asserted, respecting the dispute between the Jesuits and Jansenists, that the pope's infallibility cannot extend to facts. The pope had declared that certain doctrines were damnable. The Jansenists said they were not contained in the works of Jansenius, upon which the pope declared those damnable doctrines were contained in the work "St. Augustine" by Jansenius. It is well known that the pope had to yield in a considerable degree. It is certainly a very curious fact in the history of constitutions that the fundamental law of the kingdom of the Netherlands pronounces nowhere the irresponsibility of the king or the responsibility of ministers, but according to paragraph 179 receives "complaints against the king" and sends them to the supreme court, and that this constitution was drawn up by the king himself, who on his return in 1813 insisted upon being made no more than what he had been, stadtholder. When at last he was obliged to yield to the earnest representations of the people, he consented to take the crown on condition of a constitution which should "protect the liberty of the citizens against all possible intrusions."[1]

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[1] Wraxall, Posthumous Memoirs, p. 467, American edit.

So convinced are the English that the king can do wrong, that they do not allow him to do anything which is not considered as having been advised by his ministers, so that there may be men responsible for his great acts;[2] and on the other hand the law does not hear, if the king assures on his honor that certain objectionable acts were personally ordered by him, as was the case in Strafford's trial. No one shall obey the king personally and individually, but only politically, surrounded by the law. Whether the maxim, the king can do no wrong with responsible ministers, be a well-contrived expedient, is another question. I consider it as one of the choicest productions in the course of constitutional history; but at the same time I say, with Essex, "What! cannot princes err? Cannot subjects receive wrong? Is an earthly power or authority infinite? . . . Let them (who mean to make their profit of princes) acknowledge an infinite absoluteness on earth that do not believe in an absolute infiniteness in heaven." (His letter to Lord-Keeper Egerton, in Essex's Original Letters.)

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[1] Van Campen, History of the Netherlands, vol. ii. p. 581, Heeren & Uckert's series, Hamburg, 1833. [Constit. of Aug. 24, 1815.]

[2] * It seems that even the prerogative of pardon is virtually exercised with the advice of the minister for the home department, though the king might exercise it alone. Or would a minister resign if the king should exercise this power without advice? We find passages in the papers like this: "Lord John Russell has refused to accede to a petition from the inhabitants of Canterbury and Faversham for a mitigation of the sentence of transportation on the three men who were convicted of having been actively engaged with Courtenay when he committed the two murders." (Galignani's Messenger, Oct. 1, 1838.) The prerogative of pardon of the British monarch is constitutionally limited, so far as pardon is concerned, in cases of impeachment, by the act of settlement, which provides that no pardon under the great seal of England shall be pleadable to an impeachment of the commons in Parliament. [But when a person is impeached and found guilty, the king can then remit the sentence.]

The king is the fountain of honor, as he is of pardon, that is, as he is king altogether, namely, according to and limited by laws; he is not personally the fountain of honor. No man would hesitate to receive rather the "thanks of parliament" than a personal mark of honor from the monarch, or even an order. The history of this expression must probably be sought for in the feudal law, in which a barony was called an honor; the honors of feudal government were almost if not quite all annexed to the seisin and possession of fiefs or feuds, which were all holden mediately or immediately of the crown. So that saying that the king is the fountain of honor was but another mode of saying that he was the lord paramount of the soil.[1] Hence, when in process of time the honorary title of nobility or office came to be conferred without the simultaneous grant of lands to support it, there was no occasion of any change of phraseology, though the import of the word "honor" had become somewhat narrower and less substantial than before. Real political honor can no more be bestowed by an individual than worth. It is society on which it depends. The expression therefore amounts only to this, that the monarch is the pronouncer of honors, and only of certain ones, for doubtless it is an honor to sit in parliament, which the king does not bestow. The king of Prussia made General Blücher prince; the people called him Marshal Forward, by which name the Germans love to call him to this day. Which was the greater honor? The monarch can do nothing but pronounce political honor; and this prerogative, therefore, like any other, belongs to his political character, and proves no sovereignty, for it would always be a second-hand sovereignty, that of the law being superior to it, according to the commentators of the land themselves. When James II. left England, was the fountain of honor dried up? William III. came and made Bentinck duke of Portland. Napoleon founded the Legion of Honor; it did not follow him to St. Helena, but Louis XVIII. became, according to English phraseology, its fountain. Charles X. left France, and Louis Philippe became the so-called fountain. Is it not then clear that society, the state, is the fountain, and the respective monarch merely the spout, the jet d'eau through which the well of honor flows? If, therefore, sovereignty, as we have defined it, must be somewhere, it is certainly not in the king that we are to find it, and if the word sovereign is nevertheless applied to the monarch, it means nothing more than supreme executive power within and under the constitution, which comes from sources of superior power.

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[1] [Honor (as is shown by Prof. P. Roth, Gesch. d. Beneficialwesens, p. 432) denoted in the eighth century and the beginning of the ninth the office of the official person,—the count, for instance, who was usually appointed for life, but his *beneficium* lapsed when the king who had bestowed it on him died. From the middle of the ninth century *honor* is scarcely to be distinguished from *beneficium*, that is, to use later language, from the *feudum*, or fief. When the feudatory had count's jurisdiction, the two terms were necessarily liable to confusion. When this ceased, *honor* denoted *title*—nobility with the political precedence pertaining thereto.]

LXXIX. It would certainly be unwise in any British politician to struggle for a change of the monarch's title, or that in future he should be called King of the English, and not of England, as long as no party assumes these words as a foundation to rest important claims upon; simply because it would be a waste of energy, while the substance has been already obtained. That, however, monarchs of civically developed nations are the monarchs, *i.e.* chief magistrates, of the people, and not the monarchs of the soil, will have sufficiently appeared. In France the change of the title was important, because it was meant to indicate a change of things. By the first constitution (of 1791) the king was styled King of the French (ch. ii. sect. i. 2); Napoleon was styled Emperor of the French. When Louis XVIII. ascended the throne in

1814, he re-assumed the old title of King of France and Navarre; but in 1830, upon the expulsion of Charles X., the title of King of the French was re-established. Those who have endeavored to ridicule this idea as a modern fancy err greatly.[1] I repeat, as to mere correctness, there can be no doubt that this is the true title, in the eye of all who consider the king as part of and within the government of the country.

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[1] Mary Queen of Scots. Philip IV. (1285–1314) styles himself, writing to Pope Boniface, *Roi des François.* (Chateaubriand, Études historiques, vol. iii. p. 331.) An engagement between Philip II. of France and Richard I. of England was signed thus: "Moi Philippe, roi des François, envers Richard, mon ami et mon fidèle vassal: Moi Richard, roi des Anglais, envers Philippe, mon seigneur et mon ami." (Biog. Universelle, vol xxxix. p. 94.) Gustavus Adolphus styled himself "by the grace of God chosen and hereditary prince of the Swedes, Goths, and Wends." (Zober, Unprinted Letters of Wallenstein and Gustavus Adolphus, Stralsund, 1830.) The instances might be greatly multiplied. In Latin the king of Prussia is styled Rex Borussorum,—analogous to the ancient Rex Romanorum. And yet, in 1655, during the transactions between Cromwell and Louis XIV., the French ambassador complained that Louis had been called "rex Gallorum," instead of "rex Galliæ." Thurloe, State Papers, iv. 107

CHAPTER VII.

Public Power.—Why necessary.—Why must it be restrained?—Abuse of Power general.—Man justly loves to act, to produce, to effect something.—It is the inherent Character of all Power to increase if unchecked.—Powe rdelights, and is not willingly given up.—Power, in all Men and all Spheres, is irritated at Opposition.—Man judges according to his Position, those in Power differently from those out of it.—Power is in its Character imposing.

LXXX. THE state stands in need of power for its government, or organism through which it obtains, or strives to obtain, the state objects. Let us call it public power. Public power may rest on a moral basis: for instance, people obey a law because it is a law, not because a penalty is attached to it. In the year 1836, the members of the South Carolina legislature resolved unanimously, in a caucus, to throw away the presidential vote, or to vote for an imaginary person, because they were not satisfied with either candidate. When, however, the vote was to be taken upon this preliminary resolution, it was suggested that the constitution of the United States says (art. ii. sect. 1, 3) that the electors "shall vote by ballot for two persons." The legislature, therefore, found themselves bound to vote for some actual citizen or other, and gave their vote for Mr. Mangum, who was no candidate. It was a purely moral act.

In former times, the citizens of Hamburg contributed their quota of taxes, unseen and uncounted, after the general sum had been granted.

Or government may have the right to bestow honors and thereby exercise power. Or public power may rest on a physical basis,—for instance, when the constable with his assistants carries off a person, or government sends soldiers to enforce obedience. Or it may rest on a basis of a mixed character,—for instance, on the pecuniary means at the disposal of government. Pecuniary reward cannot be strictly called physical or moral.

Power and authority are promiscuously used in politics. Authority is the lawfully bestowed, or by common consent acknowledged, right of performing certain public acts. The supposition is that where this right exists, the power to make use of it exists, and hence the promiscuous use of the two terms. Thus, the constitution of the United States, art. i. sect. 8, says, "the congress shall have power," etc. We have seen already that all power must originally rest upon a moral basis, although not indeed in each individual case.

LXXXI. Why does the state want power for its government? Because:

1. Man is a physical, intellectual, and moral individual of himself, and must remain so. His worth and value depend upon it; and yet he is bound to live in society, and this society must, according to the great plans of the Creator, move from one stage of civilization to another. Both require an infinite variety in the combination of the elements which constitute the inner man, and infinite changes of his social relations, of which an infinite variety of character, desires, views, and actions is the necessary consequence and indeed the object. Astonishing as the power of combining throughout the rest of the creation may appear to us, in man it operates most surprisingly. Animals can live in large numbers together without many jarring interests; enormous herds of buffaloes graze together and rarely fight with one another, because their individuality is a merely physical one; they all move simply according to the food they find. It has been very erroneously supposed that the interests of men cross each other, and that consequently governmental power is requisite merely on account of man's sinfulness. It is one of the first principles of mankind that infinite variety should exist. Without it all would stagnate. This variety must lead to different views, not only according to men's wickedness, but because they are finite beings. Infinite wisdom

alone, omniscience, can penetrate the essence of all things and, consequently, their essential relation to one another. Though no citizen were ever actuated by selfishness, still, power for the government would be necessary, in order to protect the jural relations of the citizens, each one of whom can only see and feel first through himself. Each man, first of all, is the key through which he has to understand that which is around him.[1] The variety of pursuits and desires, of views which incline more either to that which has been and exists or to that which is expected, cause actions which intercept and contradict one another. A very large number of all civil law cases originate neither from insufficient laws, nor from the evil designs of the parties, nor even from their litigious spirit, but because both believe they are right and that it is their duty to maintain their right. If, then, every man shall have his due, how can it be otherwise done than by a higher authority and power to sustain the authority?

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[1] Let me not be misunderstood as if I were in any the slightest degree an advocate of the theory of selfishness or egotism, but lately prevalent in some countries. There is nothing more baneful to society than the corroding spirit of egotism. I have given my view on the importance of sympathy, in several previous passages; still, it must not be forgotten that man cannot by any possibility see through other eyes than his own, feel through another heart than his own. He begins even with regard to his feelings for others from the circle around him. Your neighbor's father dies; you feel strongly for him, for you know what you felt when your own departed. Your neighbor's son breaks his arm; you feel strongly, yet differently from what you did when your own son was brought home covered with blood. That which happens in my sight affects me more than that of which I only hear. Great misery in the street in which I live goes more directly to my heart than misery at a greater distance. The distress of the Spitalfields or Lyons weavers is read by no one without commiseration and lively feeling, yet the distress in our country, our own state, community, street, house, affects us more, in the same degree in which the circle narrows. The account that the maids of honor of Queen Catherine of France tore the clothes from the corpse of Baron Soubise, slain with so many other noblemen in the royal palace during the massacre of St. Bartholomew, and made themselves merry at the spectacle while his blood was yet streaming from his wounds (Aubigné, ii. 546; Lacretelle, ii. 352), or that Cæsar Borgia, having successively murdered, with dagger or poison, his own brother, brother-in-law, and hundreds of victims to his lust of power or desire for money, killed Peroto, the favorite of Pope Alexander VI., Cæsar's father, while his victim had sought protection under the pontifical robe, and the pope pleaded for him, so that the blood of the favorite gushed into the face of the pontiff, and that Cæsar went forth unpunished (Ranke, Princes and Nations of Southern Europe, Berlin, 1834, vol. ii. p. 50, where all the Italian authorities are given)—these accounts affect us, however intense our feelings at all the loathsome crime may be, far differently from any act of less criminality which may occur in our own community. There is always, and necessarily must be, an essential difference between the effect of anything which affects us in a general way only, and that in which we are personally interested. If it were not so, the world would be in the greatest confusion. Every one would make the cause of every one his own. Who could read a single newspaper without being rendered wretched almost for life? Or could we feel any

2. The state, through its government, must protect each citizen against any violation of his rights by wrong-doers within or enemies without.

3. The state, as a whole, must maintain and protect itself from evil designs against its existence from within, and attacks upon its independence from without.

4. The state, a jural society, must maintain its character as such. It must punish violations of rights, not only with a view of individual protection (mentioned above, 2), but also to maintain its own character as the society of right. Without punishment of offences, the state would lose its essential character, and society, therefore, could no longer exist and pursue its ends as society. The state acquires the right to make use of its punitory power against offenders by the offence committed against it, that is, by each infraction of the law, and it is its duty to do so wherever the general protection, physical or moral, requires it. By moral protection I mean that which exists in the maintenance of the character of the state, *i.e.* a society of right. Rights exist between moral beings only; animals have no rights. The state protects against offences both in a psychologic way, by affixing beforehand a punishment to every offence—by warning every

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longer, at all, if all the joyous events and sad occurrences, past and present, were to excite our interest as much as our own? In this necessary order of things, too, we have, as alluded to in a previous passage, to look for one of the deep sources of patriotism.

one; in doing so, it leaves every one free;[1] and in a physical way, after the offence, notwithstanding the penalty, has been committed.

5. One of the main state objects is, as has been seen, the obtaining jointly that which is necessary for society and cannot be obtained by individual exertion—to obtain publicly what cannot be obtained privately. This, too, requires power.

LXXXII Why must public power, if once granted, be carefully watched, modified, retarded? Because public power is not a physical power which can be either expressed or limited with absolute definiteness. The "vessel of the state" is not a steamboat, of which we can say it sails with so much horse-power. Public power is finally always founded upon confidence. Make a law ever so definite, circumscribe the limits of power which you grant, with ever so much care; you must repose confidence in him who has finally to carry out that law — the confidence of common sense and moral sense. Confidence, not indeed unlimited confidence, must be the last vital spark which makes a prescribed action a livin thing. The claim of confidence, so continually proffered b James I. and Charles I., was not wrong in principle; the difficulty lay in the degree of confidence they claimed, and both showed themselves unworthy of a far less degree. All the wisdom of government depends upon a proper balance between confidence and distrust. Confidence, then, is indispensable; but this confidence will be abused. Why? Because he who has power, whoever he or they may be, king ministers nobles, commons, clergy, soldiers, the people, abuse it. Polybius, the first who reduced the idea of a circle of politica changes, namely, monarchy, aristocracy, democracy, which changes again into monarchy, to a system, founds already the necessity of these changes upon the degeneracy consequent to the abuse of public power in each form of government. (Lib. vi. c. 3, seq.) Why is this the case? For the following reasons:

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[1] Feuerbach, Manual of Penal Law, 10th ed., parag. 10 et seq. My views of the punitory power of the state, or the primordial right of punishment, and the duty of punishment, as well as on various other subjects relating to these, have been given in a popular Essay on Subjects of Penal Law, and on Uninterrupted Solitary Confinement at Labor, as contradistinguished from Solitary Confinement at Night and Joint Labor by Day, printed by order of the Philadelphia Society for Alleviating the Miseries of Public Prisons, Philadelphia, 1838.

1. Republicans complain of the abuse of power practised by monarchs, their ministers, lords, commanders; and yet each complainant carries within himself the germ of a despot, and abuses power proportionately within his sphere as much as the others in theirs. The monarchs are men of the same organization with ourselves. Each party that is out complains of abuse of power in that which is in. Are then all these complaints mere declamation? They are not. If so, the abuse of power must be founded on some natural principle within us, and its origin need not be bad. It must be bad on account of insufficient restraint. Let us trace, then, the origin of this phenomenon.

The love of power is not necessarily bad in its origin. It is closely connected with what I should like to call the desire or urgency of action, an original principle of essential importance. Where power, energy, or any faculty for action and activity (δύναμις) has been given, there exists likewise an intense desire to exercise, practise, apply it. Such is its very nature, and without it the world would be at a stand. Whatever we may undertake originally by way of interest, the love of activity, the desire to leave some memorial of one's self, to produce and effect something, soon supersedes it. Does the merchant carry on his business in order to obtain a certain sum and then to stop? Or does he continue his operations even when, whatever the increase of his fortune may be, he cannot expect to live thereby more comfortably, give a better education to his children, or a surer prospect of independence to his wife, should he leave her a widow? It is not ambition alone that may prompt him. There are many rich merchants, neither ambitious nor avaricious, who yet remain in business, and the community praises them for continuing it. Why do nearly all men love farming in the evening of their lives, when they are excluded from the busier spheres of life? Nearly all "retired men," merchants, lawyers, politicians, princes, love farming. Because in farming, though it is calm in its nature and therefore suitable to their situation, they still produce, act perceptibly to their own eyes, and they prove to themselves, by that which surrounds them, that they are still acting beings. Does the orator, who feels and sees that he wields power by his word of mouth, merely speak for the sake of usefulness, or does that peculiar delight which a sound and energetic speaker necessarily derives from the consciousness that he exercises a mighty power over his hearers, strongly commingle with it? Did Fulton never think of anything else but of benefiting his fellow-creatures, or was he strongly propelled by the pressing desire for activity and the application of that power which nature had given him, and the delight which the soul always feels in the activity of its powers, capacities, talents, whatever name they may have? What prompts an Ehrenberg to study the structure and vital organization of insects in the burning clime of Egypt? Is it utility? What impels every votary of science to pursue his toilsome paths? Is it interest? Is it utility alone, or chiefly? or is it the delight which the human mind feels in the consciousness of activity? "Omnis enim scientia et admiratio (quæ est semen scientiæ) per se jucunda est," says Bacon. (De Augment. Scientiarum, lib. i.) And what is this admiration but the delight of intense activity and consciousness of the power and penetrating or combining action of our mind? What prompts the true poet? Was the first idea of Shakspeare to delight his fellow-men, or was it the yearning of his august genius to act, to manifest—to *exteriorize* itself, without which genius is a burning fever? What leads the painter, the sculptor, to *produce?* Was Columbus induced to sail into unknown seas only by the desire of obtaining means to drive the Saracens from Palestine, as he himself believed, or did he wish to obtain these means because his exalted mind urged him necessarily to act? The nobler the mind, the more endowed the soul, the more intense also the thirst, the more pressing the anxiety to act, to produce, to exert our powers—to imprint our mind on the world without. It is indifferent what name we give; our language has no term which expresses with one word the Greek δύνασϑαι, ποιεῖν, the German *schaffen* and *wirken;* but what I mean to convey is what these words express in their respective languages.

The love of power, therefore, is intimately connected with a principle in the soul, by which man is stamped more as the image of his Creator than by any other.

The love of power is a higher degree of the love of activity, which is found everywhere in men. All absence of activity pains us. We find it in all spheres, from the common cutting in wood or writing in sand to the grandest self-sacrifices in the scholar, who, like Leibnitz, knows he will die early if he perseveres in his studies, but still prefers a short life of intense thought to a long one of repose. This love of activity is also closely connected with ambition, on which see the proper chapter.

LXXXIII. 2. It is likewise the character of power, physical, mental, political, and moral, that it goes on increasing, if not counteracted. Indeed, it is the essential attribute of power that unchecked it will go on increasing.

3. The delight in the exercise of power, combined with the frailty of man, produces this effect, that few who have power are willing to give it up. Whether in the people or the monarch, power is a bewitching thing. There have been monarchs, indeed, who have abdicated, as Charles V., emperor of Germany, and Diocletian of Rome, but as long as they had power did they not remove everything in its way? I do not say that there may not be inducements still more urgent to give it up. Others, as the elector Frederic of Saxony, declined the German crown. But there is at times a great difference between a crown and power.

When Holland was engaged in that glorious struggle with Spain, in which thousands of deeds were performed, by men and women, which are hardly equalled by the Greeks in the Persian wars, when the whole people were animated by inspiring enthusiasm, when William of Orange was at the height of his popularity, when the inhabitants of the country as well as the cities had to contribute all they could spare to defray the exhausting expenses of the war, even then that great man could not induce the cities of Holland, in 1573, to admit among their large number of representatives at least three from the country, though the farmers of northern Holland alone bore two-thirds of the public charges. They had not a single member in the states.

How long did the English parliament resist all the fairest measures of reform, even though Pitt advocated them! The Spanish cortes in 1812 would allow Mexico no representation; Portugal behaved similarly towards Brazil. How many acts of crying injustice are recorded of Athens against those who depended upon her as allies! As soon as the various religious sects after the Reformation had obtained what they wanted, nearly all of them denied the same to others. In short, whoever gets in likes to lock the door behind him.

4. It is a psychological truth, that all power, however lawful, being resisted, the first feeling in those intrusted with it is not that of regret at this resistance, on account of the object they had in view, but of offence at the opposition itself. This, again, is not peculiar to one set of men or class of society, but without exception true of all. Monarchic power is not more offended at resistance than democratic or parental power.

Many a father who complains of public functionaries on account of their love of power forgets to ask himself at what he feels offended when his child is disobedient; because it disobeys a wise rule he has given? or because it is disobedient and therefore acts wrong? or because it has disobeyed what the father had ordained? The severity of all early penal laws arose from this source. The idea, the feeling, was, "You have dared to disobey my power, you have rebelled against my authority," not, "You have offended against society, acted wrong, because my authority is for the common good."

This is likewise the case when we are justly opposed; for, whatever may be the ground of opposition to us, and though we may have a pretty distinct perception of the right of the opposer, the first feeling is the desire of overcoming the opposition. Few men indeed are ever opposed without at the first moment having the feeling of being wronged; and this extends even to the most atrocious criminal. And as the individual, so the body. Whoever wields the public power feels irritated by opposition, be it ever so peaceful or loyal. Power therefore would overcome everything in its way, if not modified, or, which is the best, if not generated in a manner which insures the least possible danger. This jealousy of opposition is frequently increased by a consciousness of greater weakness than the possessor of power wishes to have others know, or by a suspicion that new or delegated power may not be acknowledged to the full. Alva decreed, July 31, 1571, after much debate and opposition in his own council, a most hateful law, and farther declared that the honor of the king depended upon him, and that every one who opposed him was a fool or a traitor. (Raumer, Letters, etc., i. 179; Thuanus, lib. 20.) The correspondence of Strafford and Laud exhibits the same principles.

5. Man judges first according to his own perceptions, and it requires great skill and much honesty to view matters in the light of others. (See the previous section and note.) If I feel oppressively warm, I say the weather is warm, and believe all must feel oppressed, until I have learned that my body may be in a state in which a comparatively low temperature may produce the sensation of a very high one. Those in power can but with difficulty see things from above as those not in power see them from below. It is therefore the history of all governments, all revolutions, that those in power, from whatever part of the people they may have come, judge by their own view as it appears from their seats, as soon as fairly seated in them.[1]

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[1] There is a scene depicted in chap. x. of Mr. Bulwer's Rienzi, so expressive of what happens every day and everywhere, through all spheres of human life,

6. Power imposes; power receives everywhere respect by its own character. However illegally acquired, the great action of power obtains homage. The success of usurpers is in part founded upon this fact; the people revere power; so that usurpation itself becomes a new acquisition to farther usurpation. It is the energy which manifests itself and the capacity of action thus proved which overwhelm the beholder. This is of peculiar importance in its application to the limitation of the executive, the depository of this vast acting and imposing power, and to the independence of the judiciary, which rarely has an opportunity to act brilliantly like the other branches.

7. Even after careful limitations have been established, it will always be possible for those who have power to overstep them and to find aids and abettors. Hardly had parliament abolished the most ruinous monopolies, and declared a principle which may be considered as the germ of the Petition of Right, in 1623, when James I. sold new monopolies and levied anew arbitrary taxes on commerce, because, as he asserted, the constitution gave him the right to make commercial treaties. Soon after the Petition of Right had been obtained, Charles I. dissolved the parliament, and did not summon another for twelve years, attempting meanwhile by various illegal ways of raising money to supply the needs of the treasury, and thus paving the way for the loss of his life and crown.

Is there not, then, reason enough to limit and retard power and prevent it from growth?

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that I feel tempted to quote it. The reader will recollect that a painting was exhibited for the purpose of testing and exciting the Roman people:

"'Know you not,' at length said Pandulfo, 'the easy and palpable meaning of this design? Behold how the painter has presented to you a vast and stormy sea—mark how it waves.'

"'Speak louder—louder!' shouted the impatient crowd.

"'Hush!' cried those in the immediate vicinity of Pandulfo; 'the worthy Signor is perfectly audible!'"

CHAPTER VIII.

Legitimacy of Governments.—Governments de jure, de facto.—Divine Right.—Legitimacy of Governments with Reference to International Intercourse.—Can the Legitimacy of Government be ascertained by its Origin?—Filmer, Locke, Rousseau, Haller.—The Origin of all States essentially the same; yet Infinity of Circumstances, which influence and modify its Development.—Ancient View on the Origin of Governments.—Aristotle, Polybius.—Various Theories.—Social Contract.—Various *Pacta.*—Hobbes, his Error.—Theocratic Theory.

LXXXIV. Before the subject of limitation, or, as more fitly it might be called, of moderation of power, is treated, it will be necessary to consider some others. The first is the legitimacy of governments. What is a legitimate government, for which we have claimed power? What are governments *de jure*, and what *de facto?*

If nations or states had never been considered the descendible property of the ruler and his family, and the ruler, therefore, something above or without the state, and if people had not been dazzled by the supreme power, mistaking it for the government, and its change for a radical change of the state, while nevertheless such changes may take place with very little essential change in the great bulk of state institutions, as has been said before—the dispute about legitimate governments would not have assumed the character which it actually has, in spite of all facts which history furnishes. After having settled the true meaning of state, sovereignty, government, public power, and supreme power, it is easier to arrive at a clearer notion of legitimate governments.

Generally speaking, that government is legitimate which exists according to the fundamental laws and usages of the state, *i.e.* the society; or, if these organic laws have been changed, the existing government is legitimate if the people may be considered as acquiescing in it. If the people composing the state are really satisfied, it is perfectly clear that no one else can doubt the government's legitimacy, for, trite as the truth is, it is still of fundamental importance, that the government is simply and solely for the benefit of the society. But frequently the people are kept in such a state that it is impossible to ascertain whether the people can be considered as acquiescing in it, even if we put the most extensive interpretation upon this word, or whether they will break forth the moment after the demise of the ruler, and destroy his statues, execrating his memory:

> "Descendunt statuæ, restemque sequuntur, . . .
> Ardet adoratum populo caput, et crepat ingens
> Sejanus." JUVENAL, x. 60, seq.

—a post-mortem censure repeated by the Romans against the pontiffs,—for instance, when Pope Paul IV. (Caraffa) died, in 1529, and the people dragged the head with the tiara of his statue through the mire, of which occurrence Mocenigo gives an account (Ranke, Popes, transl., i. 192). Suppose those who perform these acts are, as in some cases, *e.g.* under the Roman emperors, they must be considered, the correct exponents of public opinion, all we can say is that the government, the agent of the state, may have committed many illegal acts, as agents of any sort may at times do.

A government may grievously oppress the people for a series of years, and every one who could produce a favorable change might be a public benefactor. So long, however, as the government does exist, so long as the people prefer the oppression to the danger of a change, they must follow the oppressive government. A government fairly established, which includes acquiescence of the people, must be considered as legal, which, however, does not exclude the right or expediency of changing it, inherent in the state or society.

The dispute about the legitimacy of governments is unprofitable, and it is far better to inquire into what are wise or ruinous, sound or rotten, just or unjust governments.[1] The peculiar theory of legitimacy maintained by the continental members of the Congress of Vienna is opposed to reason, history, and the course of policy which the proclaimers of that theory have been induced to adopt themselves. Louis Philippe was acknowledged, and his son intermarried with a reigning family. Napoleon was acknowledged by all powers, and received the hand of a daughter of an old imperial house. Talleyrand must be considered as the first who distinctly pronounced, at that congress, this remarkable theory, which at most can be adopted only by the devoutest legitimists. For the sake of order it is needful to agree to consider legitimate all European rulers that now exist, and those who shall descend from them by legitimate intermarriage with ruling families. This, however, would amount to nothing more than an expedient, about which people may have different opinions; for the question, When does the ruler become legitimate? is not settled. Talleyrand had nothing else to bring forward in favor of the Bourbons, when Napoleon had returned from Elba, and it had become clear to many members of the congress that the Bourbons were not the men of the French nation, and Austria inclined to readmit the emperor on the throne. The principle was effective; it saved the Bourbons. The English, of course, have never acknowledged this principle, because their constitutional law is founded upon the distinct acknowledgment of the nation, that calls rulers to govern according to certain rules, principles, and fundamental laws laid down by the people. But, even according to the fanciful theory of the legitimists themselves, who is the legitimate ruler at present (1838) in Spain?

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[1] * *Divine Right.* The red republicans, Socialists, etc., demanded it as a condition of being a candidate for election to the chamber in 1850 (in Paris),

LXXXV. All governments begin as so-called govern-

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among other things, that the candidate ought to acknowledge that the majority of the people, in universal suffrage, have not the right of establishing monarchy. Is this not a divine-right theory of republicanism, or divine right of *reason*, as they probably would call it? But does the republic exist on its own account, even though it may be the most mischievous government in a certain country, at a certain period? And if not, when does this divine right begin?

ments *de facto*, if the people do not actually and formally establish them. This is but rarely the case, and can be but rarely so, according to the political civilization of mankind. By this I do not mean that fact makes right, though fact has generally preceded right. The necessity of man's living in the state is so absolute that, whatever changes may take place, a legal relation will soon develop itself out of that which violence and fraud, or wisdom and devotedness, may have founded. The origin is not the thing. The first sounds from which the noblest idioms arose may have been utterances not much differing from those of animals, yet the subtle organization of the Greek idiom is something very different from a brutish means of communication. Society wants jural relations; it cannot exist without them, and it cannot, therefore, continually recur to its first elements, but must transform the given circumstances into jural relations. This shows the naturalness and energy of the state. So the people must live, and they want bread. If some one conquers the land and violently changes the owners of the soil, does not the same natural necessity of using the produce of that soil exist, and is it not lawful to buy the grain of the new possessor? The urgent want of a state, the indispensable necessity of living within a state, is superior to all claims which may be set up as to the possession of power, just as the absolute want of nourishment is superior to any consideration of the title by which the land is held which produces it.

If certain individuals had any distinct rights and claims of their own, derived from some source besides the necessity of the society existing over which they claim the right to rule, then we might speak with propriety of legitimate monarchs in contradistinction to changes of the government effected or fairly acquiesced in by the people. According to our theory, given in previous chapters, this is impossible. Was Louis XVIII., when an exile in England, the legitimate monarch of France, and not Napoleon? He certainly was not the monarch of France, and therefore could not be the legitimate. "A wise man," says Sophocles (Œdipus Rex, 587), "would prize less a king's name than to do the works of a king." So soon as we give up the idea of rights personally and absolutely inherent in the monarch, and not dependent upon the laws of the land, the difficulty vanishes. This is not mere theory, but, in spite of all pretensions to the contrary, the people have always been obliged to acknowledge by facts that the state does not travel with the prince, but remains with society, with its everlasting legality and legitimacy, though a usurper may seize upon the supreme power and commit a number of illegal acts. We have seen already that Louis XVIII. could not help acknowledging the legal state of things which had grown up during his absence. It was not Louis XVIII. who had succeeded Louis XVII., who never reigned, that was received by France in 1814; he was a new ruler, really and truly succeeding Napoleon. Indeed, the idea that the monarch carries away with him the legality of the state is no less preposterous than it was in the emperor Frederic III. to count his amputated foot among the *avulsa imperii:* "now a leg has been cut off from the emperor and holy empire." (Grünbeck, 41.) When the elector of Hesse returned in 1813 to his country, he declared the king of Westphalia, having been a usurper, to have possessed no right of selling the domains, and therefore took possession of them without any restitution of the sums for which they had been purchased. Prussia acknowledged the sales which the same kingdom of Westphalia had made of her domains. The Germanic diet decided against the elector and for the purchasers, and when that prince for years declined to yield to the diet, and all the endeavors even of Austria were in vain, the diet ordered the troops of the neighboring members of the confederacy to make the elector comply with its decision.

LXXXVI. The English go still farther. "A king de facto and not de jure, or, in other words, a usurper [of the crown], is a king within the meaning of the statute which defines treason (25 Edw. III., c. 2), and therefore treasons committed against Henry VI. were punished under Edward IV., though all the line of Lancaster had been previously declared usurpers by act of parliament. But the most rightful heir of the crown, or king de jure and not de facto, who hath never had plenary possession of the throne, as was the case of the house of York during the three reigns of the line of Lancaster, is not a king within this statute against whom treason can be committed." This passage and its continuation (taken from Blackstone, iv. 76 et seq.; see also Hallam, Constitutional History of England, vol. i. chap. 1, pp. 12, 13) show in the clearest possible light that, according to English views, the state and monarch are totally different, and that treason is not so peculiar a crime on account of inherent qualities in the royal person, but simply because the king is seated on the throne on account of the safety of the state or the benefit of society. I would refer, as to these momentous points, to Hallam's Constitutional History in general. Protection, the main object of the state, requires, as we have seen, power; but governments sometimes lose for some reason or other, by their own fault or not, all necessary power. Is then a powerless government still a legal government? that is, is a government which cannot any longer perform that for which it exists, still legal? If so, then the people exist for the government, not the government for the people. St. Zachary, the pope, sent word to Pepin, who had demanded an answer, "that he who had the power had better possess also the title of king." That I do not strive to establish the theory of mere power, as it rules in Asia, must appear from all that has been said, and will appear still more from the sequel.

And let me add, how has mankind at large decided the matter? Why is there universally made so broad a distinction between treason against the government and any other crime? Let a fugitive convicted of treason against his *government* at home go to any other country, is he treated as a criminal, received as a thief would be? But let the fugitive have committed treason against his *country* and betrayed it, and will he still be received as a man with whose act society has nothing to do? In the British Peerage it is mentioned of the ancestors of some peers that they were executed for treason. Would it be mentioned if they had been beheaded for an act of treason against their country? The effect upon us when we learn that such or such a lord conspired against the king is very different from that produced by the treachery of some ministers of Charles II. or the common murder committed by Earl Ferrers. Is this universal difference not founded upon some true principle? Surely it is.

LXXXVII. Louisiana, bought in 1803 by the United States from the French, was, perhaps, illegally acquired; for, besides the great probability that the inhabitants of Louisiana territory were averse to the purchase and called upon the Americans to act up to their principle of popular liberty, congress had a very questionable constitutional right, if any, to spend fifteen millions of dollars for the purchase of foreign territory. But there are reasons and circumstances which carry along states and nations. To be securely and truly master of the western country it was necessary for the United States to possess the mouth of the Mississippi; and would now any one insist upon the members from Louisiana being excluded, because Louisiana was acquired unconstitutionally? With how many frauds and crimes has that country we now call France been brought together! yet she forms at present a state with all legal requisites. Some call this the right of conquest. First, fraud is not conquest, and secondly, conquest and right are entirely different things, for the very idea of conquest is that I acquire something by force and not by right. The fact is simply this: mankind rise gradually out of the state of force into that of reflection, in politics as in any other branch. But whatever these many different conditions may be, which affect the rise of various states, they could not rise and develop legal relations even out of the merest relations of violence, if there did not exist the necessity of the state, *i.e.* of a jural society for men. The question of legitimate governments resolves itself into two: who shall be acknowledged by foreign powers as the legitimate ruler or rulers, and which is the legitimate government at home. The first question, properly belonging to international law, has in practice always been decided according to fact; that government which is fairly established is acknowledged, except it has been the interest of the foreign state not to do so. A sovereign nation is, because sovereign, free and independent, which involves that it has a right to establish any government it pleases. This does not exclude the necessity under which some states may be, of interfering with the affairs of another; for, whatever the theory may be, practically it is true that states are sometimes so closely connected and interlinked by various interests that they essentially affect each other, however inconvenient it may be, or opposed to honestly professed principles. Self-preservation alone forces at times a state to interfere with the affairs of another.

The second question is much simpler, if we recollect what has been said of the state, and that absolute or blind obedience to whatever authority is a moral incongruity. (See on Obedience to Laws.) If, however, the citizen must decide in a time of civil war, as at present (1837–1838) in Spain, he must make up his mind solely according to the question, which of the contending parties promises the comparatively best government according to the principles on which it stands as a party, or on which it has set out in the contest, and which are, according to the natural course of things, most probably its inherent principles—to which it will owe its existence, not its proclaimed principles, or professions. For, be it repeated, no government, no dynasty, can possibly have any claims of its own, equivalent or opposed to those of the nation. If one of the contending parties is the government, according to the established laws, and yet the other party would be the eligible one according to the principle laid down, we must decide which will be for the more essential welfare of the state, to adhere to the established laws, or to change them by the victory of the other party; for no laws are immutable. Surely it would not have been wise or good to fight for the Merovingians against the Carlovingians. (See Political and Legal Hermeneutics.) In the latter case the change may be partially or wholly a revolution.

LXXXVIII. When the idea of the state became gradually more clearly developed, as an institution with a character distinctly its own, and more and more separated from the ideas of force as well as that of the family union; when the state, in the progress of the ideas of justice, began to be separated from the dross of foreign matter, and men endeavored to sift that which is essential to the institution of the state from that which is accidental and unessential, it was but natural that various attempts should be made which were partially or wholly unsuccessful. It has happened thus with most institutions. Mankind required thousands of years before so simple an institution as that of the judiciary, or even that of penal jurisdiction, could be clearly developed and separated from the entangling notions, first of private vengeance, and afterwards of public vengeance. One of the erroneous notions of the state, yet easily accounted for in the course of civilization, was that we should arrive at the essential character of the state by investigating its origin, a misconception to which the most opposite parties sedulously adhered. Filmer and Locke, Hobbes, Rousseau, and Louis von Haller,[1] have all in their turn believed it possible to ascertain the precise character of the state by this mode of inquiry, and every one of them has, as it now appears to us, unavoidably been obliged to recur to the strangest fictions. But when Euler endeavored to reduce the principles of music to mathematical laws, was he told that it was folly thus to ascertain the character of this soothing art, because the first people that beat the cymbal or the drum knew nothing of mathematics? Is it wrong to say that music kindles the feeling of devotion, because the first conch that was blown may have served to animate people to contest and slaughter? Or is it wrong to treat of music separately, and acknowledge it as an art by itself, because music began and rose in combination with dance and poetry? Is music forever destined to be inseparably united with dancing, because the first notions of rhythm, essential to music, manifested themselves in the dance? Are the vine-dressers not allowed to give utterance to their happy feelings at the conclusion of a rich vintage, because all dances were, perhaps, originally of a religious or warlike character? Do we learn anything with regard to the true character of the infinitesimal calculus or the celestial mechanics from the fact that all counting began with five fingers, so that it is believed that *to five* (to count by five) was the original expression for counting?[1] Do we learn the true character of a healthy, comfortable, and safe house for a civilized man from the first tents, which consisted perhaps of nothing more than the skin which served also as a cloak? We may learn, indeed, that man is left physically so unprotected that, be it against burning sun or piercing cold, ray or rain, he is always found with some shelter or other, and that to him therefore, naked but endowed with reason as he is, a shelter, a hut, a house, is a consequence as natural to his organization as the well-lined burrow of the northern animals, or indeed their fur itself.

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[1] See the article on him in the Encyclopædia Americana.

LXXXIX. The state originated always in one and the same way, that is, by the conception of the idea of the just, or by the development of the jural relations among men. These relations, however, developed themselves, and continue to develop themselves, out of an infinity of given circumstances and conditions, produced by family adhesion, force, fraud, vengeance, pride, deliberate debate, slavery, kindness, and love of liberty, conditions growing out of the life of mountaineers, or of herdsmen in the steppes, or in well-wooded plains, of countries with navigable rivers, inlets or barren wastes, islands or diked shores, or the summits of mountains,[2] of hunters, agriculturists, mariners, merchants, or warriors, men that had, or men that desired property, of pirates or protectors of the weak,[1] out of pure religion, or persecution.[2] Hippocrates, Aristotle, Montesquieu, mention the influence which soil and climate exercise upon the social relations, and the state: they influence, but I do not say that they determine, the latter.[3] The reason is very clear. All the various relations which may subsist between men make up that, which unites them into society and leads to jural relations, or, if protected by pronounced laws, legal relations; the sum total of which is the state with its government. A state is always something gradually grown and of progressive development, for a man can no more step out of his time than he can help being the offspring of his progenitor. He can and will improve and develop, or change and rebuild, but in no instance can he possibly begin anew. And were he to break down everything, or to build from scattered fragments, still the materials he has are the fragments of broken institutions, and his mind is necessarily formed and fashioned by his time. "Nec temporis unius nec hominis esse constitutionem reipublicæ," are the words of Cato. Cicero, de Republ., ii. 21.[4]

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[1] Homer, Odyssey, iv. 412.

[2] See General Introduction to Heeren's Sketch of the Political History of An-

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cient Greece, 2d ed. of the translation, Oxford, 1834, for the decided influence which the physical state of Europe, climate as well as surface, had on all her domestic and political institutions. The whole superintendence of the dikes in Holland came, in the natural course of things, to be managed by elective boards, and Van Campen shows that this circumstance essentially contributed to the growth of republican notions, as the Alps led the Swiss mountaineers to theirs. Van Campen, History of the Netherlands, vol. ii. page 12, et seq. (in German, in Heeren and Uckert's series of histories.)

[1] The French colony of St. Domingo, on the one hand, and the Knights of St. John (at Rhodes and Malta) on the other; for the latter formed a real state to all intents and purposes, with sovereign power.

[2] Many sovereign bishoprics and archbishoprics; the state of the Jesuits in Paraguay, and the annexation of Granada to Spain, or in fact Spain herself, and so many Mahomedan states.

[3] Dicta so true have been enlarged and carried out too far by many. See abundant instances in Falconer, Remarks on the Influence of Climate, Situation, Nature of Country, etc., 1781.

[4] * That which, in a more restricted sense, is called, in common parlance, a state, *civitas*, that is, stable society with government and laws, with fixed abodes in one particular country, necessarily begins only with the growth of landed

As to the larger states, they have, in many instances, actually originated in a contract. When families increase into tribes, and tribes again subdivide themselves, continued war between them, chiefly on account of revenge for some injury, especially for homicide, is often the consequence. To avenge the death of a kinsman, or fellow-member of the tribe, is considered by all early nations as a sacred duty. As, however, the various tribes of common origin cultivate the same religion, the celebration of common holy rites leads these distracted parts at certain seasons together. In order to celebrate these religious feasts in peace, it is necessary to suspend hostilities; this leads to agreements of peace for a limited period, and these become, in the course of time, the foundations of national compacts. Finally, many of these confeder-

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property, in all larger states the most important part of property, to which our expression "real property" even now points. The early law of England took no cognizance of movable property (Blackstone, Com., ii. c. xxiv.), partly because there existed but little movable property claiming legislative attention, partly because the possession of land determined the relation of the individual to the political society in a far different degree from what the possession of any movable property could do. Heeren, in his Essay on the Rise and Progress of Political Theories, contained in the translation of his Historical Treatises, Oxford, 1836, says, "The first, though not the only, object of a state is the *security of property*: now, although movables are just as much property as land, yet it is only where the latter has been appropriated that the right of property attains to its full importance; and not only this, but the necessity of defining its different forms by laws is then for the first time perceived, because land is, from its nature, the only permanent object of this right." This last remark is too strong, and does not keep sufficiently in view the immense importance which, at later periods, personal property in the shape of moneyed capitals acquires. So likewise must we limit Heeren's views as to the historical beginning of states. Previous to the acquisition of landed property he maintains that no state exists, and actually says, "no one would argue that the Calmucs, or the Kirgisian and Arabian Bedouins, form what is properly termed a state (civitas)." As to civitas, we have the association of a city, a compact community, in our mind, and if we may not ascribe to those nations what is "properly termed a state," most assuredly we must ascribe to them what is philosophically termed a state, else I do not know what we ought to call their jural society. This certainly exists, for they have laws, they judge delinquents, they declare war, they maintain right, in their fashion indeed, but still right and jural relations they do maintain. To be brief, have they or have they not a *government?* If Heeren is right in this point, then I believe the expression patriarchal government to involve a contradiction.

acies grow into more consolidated states. Yet these compacts are not the first origins of the state; the state, that is, political society, exists already. The history of Sweden furnishes a striking example of this process of political generation.

XC. The chief theories respecting the origin of the state are those which start from a previous authority, from force, a religion (or priesthood), or contract. I take the latter first. Ancient and modern authors, in order to explain the right which a government has over the governed, have asserted that the state was founded upon a contract of its members for mutual protection and assistance, for which each one is willing to give up what has been termed natural liberty, a state in which man was supposed to depend upon his own will alone. Some writers, and among them are scholars of great distinction, believe not only in the theory of an implied or tacit contract, but that all political law (or state law) has grown out of the germ to be found in the contract of a certain number of tribes.[1] Aristotle says distinctly, in his Politics, that the regal power has been founded by the will of the people. Plato's view of the origin of the state coincides with that of Aristotle. Polybius calls royalty (βασιλεία) only that government which has originated out of the free will of the people, and which subsists more by public opinion and acknowledgment than by force and fear; in the contrary case he calls it monarchy. (Polybius, vi. 5, seq.) And well may be mentioned here again Herodotus (i. 96), where he gives an account of the origin of the monarchy of Deioces among the Medians, out of free choice of the people; for, whether the event actually occurred in this manner or not, the passage sufficiently shows the view of the ancients.[2] See book ii. sect. xxxi. n. 3.

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[1] Staatsrecht des Alterthums, by Charles D. Hüllmann, Cologne, 1820, p. 59. Compare also his Fundamental Constitution of Rome, Bonn, 1832, p. 22, et seq. Mr. Hüllmann is professor of history in the University of Bonn.

[2] I refer the reader to the very thorough work, Darstellung des Griech. Staats-

XCI. If we understand, by the theory of the political or civil contract, that view of the state according to which it is a politically organized society of members, each of whom stands in a jural relation to every other member of the society, therefore, in this point of view, in a relation of equality, namely, the equality of justice; and if we farther mean to express by civil contract that no jural relation, be it between the mightiest and the weakest, can possibly exist without a reciprocity of obligations (for the contrary destroys the idea of obligation, since obligation can only exist in moral beings, and obligation if on one side only would destroy the character of a moral being with a moral value of his own), that the state is a society of common and mutual weal, guaranteed by the law, which one of the ancients calls "communis reipublicæ sponsio;" if we finally mean by civil contract that those fundamental rules according to which some nations govern themselves are binding upon both parties until changed by the state, *i.e.* by society with inherent sovereignty—then the theory of the civil compact, or contract, is correct, and the only one which gives to the state its true, that is, jural character, and thus insures its lawful continuation. If, however, we imagine by civil contract an actual agreement made at some definite period between human beings, otherwise either running wild and harming one another, or possessed of well-developed reflection, who enter, after mature consideration, into so solemn a covenant (the one supposed by Hobbes, the other by Locke), and that a contract of this sort with a particular government or dynasty is binding forever; nay, if we theorize this idea so far as to adopt three

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verfassungen, by F. W. Tittmann, Leipsic, 1822, p. 80, et seq.; also to W. Wachsmuth, Hellenic Archæology from a Political Point of View, Halle, 1826, 4 vols., vol. i. pp. 92 and 100—a work of vast research.

That all the works of distinction on Greece and Rome, as those of Heeren, Müller, Gibbon, Niebuhr, also Guizot, etc., are important here, need not be mentioned. I have not cited Cicero De Republica, for, as is the case in nearly all the writings of this author, he chiefly follows the Greeks when he discusses philosophical points.

different compacts—the *pactum unionis*, according to which the individuals determine by a majority of votes the end and object of the union or society; the *pactum ordinationis*, according to which the ruler and the fundamental laws are designated; and the *pactum subjectionis*, by which the contracting parties subject themselves and all future members to this ruler or government, as Puffendorf represented it—then the idea of the contract is radically wrong, and leads to dangerous conclusions, favoring tyranny or licentiousness.

XCII. First of all we have to imagine man in a supposed state of nature, in which we never find him, nor is it possible to say which of the two early stages of human society is the state of nature, when, as Hobbes says,[1] every one wars with every one, for which we have, as he says, to imagine a number of men just created. But politics is not an imaginative science, and we can find nowhere such a number of men. Or we must imagine a society living in peace but obliged to protect themselves against others. Hobbes says that every man naturally distrusts every other, and among other things he points at our locks and keys as a proof of his position. But he forgets that the knowledge or suspicion of one thief existing in a community of twenty thousand would induce all the honest members to make use of locks. On the contrary, man trusts a thousand times before he distrusts once. Our whole life and intercourse are essentially founded upon trust; look around you, and you will find innumerable instances. Nor is this so only because we live in a regulated society and politically protected. Caillé started from the Senegal and worked his way to Timbuctoo and back to Fez through the desert, single-handed, without protection. He undoubtedly knew that there was great danger in his undertaking, but, on the other hand, was not his perilous journey mainly and essentially undertaken upon the idea of trust in utter strangers, that had not been visited by Europeans before, and had not even a common color with him? He trusted because they were men, and for no other possible reason, and considered all the chances of perishing by the hands of the Africans, however great the danger, still as exceptions.

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[1] "Seeing then to the offensiveness of man's nature one to another, there is added a right of everything, whereby one man invadeth with right, and another man with right resists, and men live thereby in perpetual diffidence, and study how to preoccupate each other, the estate of men in this natural liberty is the estate of war," etc. Hobbes, De Corpore Politico, part i. chap. i.

The same great author says, in his Leviathan, part i. (Of Man), chap. xiii., "Again, men have no pleasure in keeping company, where there is no power able to overawe them all." Yet men will always congregate, even when public power has been relaxed.

If a stranger tells you something, to what do you incline, to believe or disbelieve him? You only disbelieve if there are particular reasons which induce you to do so; if none, you believe, or incline to believe. Men, like animals, have to learn distrust; their nature is confiding.[1] Hobbes, moreover, contradicts himself, for does not every idea of a compact show that each one has confidence in a greater number than he distrusts? His very idea is founded on trust. He who has seen a body of troops which for some reason or other is seized with distrust in the officers and in one another, or which, composed of heterogeneous elements, has not yet arrived at mutual trust, knows how futile any attempt is to keep them together even by force. There is no imaginable force that can keep a body of men united, be it for whatever purpose, if they are not first morally united, be this upon habit, prejudice, or even for criminal purposes: the union must be mental in its origin.

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[1] Clapperton found the cranes in Africa without any fear. Lieutenant Paulding (Cruise of the U. S. Schooner Dolphin, New York, 1831) caught the birds on the Marquesas Islands with his hand. Bougainville found, in 1765, foxes and hares on the Falkland Islands, tame. Turkeys and deer, though hunted by the Indians, were comparatively tame when the Puritans landed in New England. The works of Cook, Kotzebue, or any circumnavigator state the same. So likewise many reports of the first Spaniards who went to South America. What is more, the animal learns to regulate its caution according to the habitual danger. A hen flies from the boy, but only to a certain distance. Many animals in the forest flee from man with a gun, but show comparative confidence if he be unarmed.

XCIII. Secondly, it is thought by this contract to establish the reason why man shall obey the laws, why every member is bound to acknowledge public authority, even though he dislike it. No one can study the writers on natural and political law without perceiving at once that, whether they were always aware of it or not, when they spoke of government, as I have said already, the idea of the monarch was present in their minds. Hence government appeared to them as something separate from, opposed in a degree to, the people: in short, they did not conceive society as such, but people as the ruled part and government as the ruling, both materially separate and distinct. Hence the many incongruities in writers whom we have nevertheless to acknowledge as minds of great power and grasp, and hence, likewise, the totally opposite ends which they have arrived at by the same means. Hobbes, by his covenant, arrives at the most absolute monarchy, in which the ruler has power over life, death, and religion—over everything; and Locke arrives at a limited monarchy. He, indeed, made a great step towards the true understanding of the real source of power (which power Bodin, see chap. ix., not to speak of the ancients, had found already in the people) by acknowledging, at least, the family in that supposed state of nature, and making the covenant only between the heads of families, by which therefore he escapes the absolute submission of Hobbes. (See Locke's Two Treatises of Government.) If I thus show in what previous writers have, as I believe, erred, I nevertheless acknowledge with gratitude their great merit, and believe, moreover, that political science could hardly have developed itself without passing through these gradual stages. Hobbes, whatever erroneous consequences he may have derived from his supposed state of nature and consequent compact, yet made a great step, indeed, towards bringing home power to its true seat. He brought power, at least, to a human origin, which was no mean service to rational politics. Without it, the state would not even now be acknowledged essentially a jural institution.

XCIV. "No law can be made, till they (men) have agreed upon the person that shall make it," says Hobbes, in his Leviathan, part i. chap. xiii. But is the agreement to invest a man with so important a trust as that of making laws for others, no law itself? It is the most important law of all—the fundamental law. And whence do men derive the power to elect, in other words, to fix, by a majority of voices, upon a man that shall rule? Where is the right to bind the minority? Here is the point that can never be solved by the theory of the contract, taken in the sense as I treat of it here. Even where the men assembled and joined, as in the case of the Rhode Island planters, previously mentioned, they never doubted for a moment that the majority have the right over the minority, which destroys, however, the idea of the contract, for a contract requires a voluntary agreeing in all parties, and the minority would not be voluntary parties. This, again, is a case in which a word has misled: "the people make a contract," but the people are not yet an aggregate. Every one is still insulated for himself. Each one, therefore, must agree for himself.

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[1] * As to the history of the idea that power comes from and is granted by the people, I will remark here only, with regard to England, that Hooker, who died half a century before Hobbes's Leviathan was published, makes in his excellent Ecclesiastical Polity this remark: "So that in a word all public regiment, of what kind soever, seemeth evidently to have arisen from deliberate advice, consultation, and composition between men, judging it convenient and behoveful; there being no impossibility in nature, considered by itself, but that men might have lived without any public regiment" (Eccl. Polit., i.): yet he speaks of "times wherein there was as yet no manner of public regiment" (Ib.). Practically the consent of the people we find acknowledged in the Parliamentary Declaration of 1648: "They (parliament) suppose it will not be denied that the first institution of the office of a king in this nation was by agreement of the people, who chose one to that office for the protection and good of those who chose him, and for their better government, according to such laws as they did consent unto." Translator of Heeren's Essay on the Rise, Progress, etc., of Political Theories, in his Historical Treatises, Oxford, 1836, p. 142.

Whence do the men derive the right to contract for women, children, and servants? If in that so-called state of nature all are utterly free and unconnected with one another, whence above all the right to contract for those that do not yet live? To contract for them after the laws of the land have once been established may be right, for private purposes, because it may be expedient in order to avoid certain evils; in short, it may be right to give the right of contracting for unborn generations, if the sovereign power inherent in society declares it to be right, but it involves an absurdity if this sovereign power itself is the object. For the object of the philosopher was to establish legality and the right of demanding obedience on the side of the authority by mutual consent, which, therefore, is the first foundation of the authority, and yet here some persons do establish an authority which shall have power without the consent of some. The assertion that the original contractors represent the unborn generations, is an unmeaning evasion, for that which is not cannot be represented. If we nevertheless use this phrase, it has significance only so far as a positive law gives meaning to it, but otherwise it has none. Moreover, the idea of representation in the first contractors is again a contradiction, because representation requires previous arrangement, legalization. How could my forefather contract away my absolute freedom? To keep then the state in existence, it would be necessary to repeat this contract from time to time, say every twenty years. In the mean time, no one that had been born after his father had consented to it, and before he personally had consented to it himself, would be amenable to the laws. To be sure, according to the believers in a primordial state of nature, we should have the right to molest, torment, or kill them like wild beasts. Perhaps it might be proposed that they should wear a distinguishing mark, a cap of dog-skin, as the enslaved helots were forced to do by the Spartans.[1] It would be for the benefit of those natural men, to show that no constable had any right to seize them, and for the artificial men or citizens, that they might raise the hue and cry as soon as such a political non-juror showed himself. In what a state of things all society would be thrown every twenty years, when the contract must be renewed! All property at an end, all institutions broken up, all lives at the disposal of every one, all law dissolved, every one a perfect Adam in right and might, everything and every one belonging to every one—a state of savageness with all the horrors of a dense population and minds refined, stirred, and excited by civilization, without the restraint and moderation of law, simultaneously and correspondingly developed. And, after the contract should have been renewed, what hunting down and killing of the non-contractors! The new state must needs begin with offering a reward for the head of every non-conformist, as now we offer a pound for a wolf-skin or some shillings for a crow's head; or, as of old, a price was offered for a dead Indian. For it is evident we have no right whatever to judge by our laws the proud non-contractor who, in the full consciousness of his natural lordship and absolute freedom, spurns the idea of becoming an abject contractor. As to relations with other nations, we should acknowledge piracy as the only one, for have they signed our bond, have we theirs? Can any state of physical and mental progressive development of our society or nation be imagined under these circumstances?

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[1] [This dog-skin cap, however, was no other than the ancient head-covering, worn by Laertes in the Odyssey and by the Arcadians. The compulsion was the grievance. See Müller, Dorier, ii. 40.]

It is surprising that these necessary consequences of the theory of the contract, which would be precisely as I have represented them, have not shown before the untenableness of this theory. Indeed, it actually led a great statesman to perceive, in a measure, its consequences, for he says, in one of his letters, that, properly speaking, the contract ought to be renewed from time to time. How long ought the binding period to last?

I repeat, then, the state exists by necessity; not this or that particular state, which has been modified by a thousand favorable or untoward conditions, geographical, historical, social, religious, or scientific; but always does the state exist, however corrupt or pure.

XCV. A few words on the other theories of the origin of governments, mentioned above. Sir Robert Filmer, who died about 1688, wrote a work, Patriarcha, published in 1680, in which he derives all authority from the fact that Adam, the first monarch, was likewise absolute master of his children; hence the people are naturally and from their births subject to their princes, when the monarch comes to be separated from the natural father. Whitaker again started this theory, about fifty years ago, and, strange to say, not without attracting some attention. Let us associate the name of Filmer rather with the fact that he wrote at so early a period against witch trials, than with this more than untenable theory. Men like Filmer saw that by the absolute contract it is impossible to gain a sure foundation for political authority, and therefore sought for a natural foundation of power, committing, however, in turn, the common mistake of confounding power, government, and state.

Others explain the origin of the state on theocratic grounds. All government, according to them, descends from the priest, that is, the authority of God proclaimed by the priest, or, all political relations originate from religion, the primary and fundamental relation of all society. It is a view which, incredible as it may sound, has found, of late, again some prominent advocates. I have already answered this theory: religion is not justice, the church is not the state. The fact that we find the character of the priest, father, and ruler blended in the rudest stages of society, if we choose to call sacrificing for the family, distinct priesthood, and giving rules for the house, ruling, is no proof that the state originated on theocratic grounds. There can be no doubt but that those primitive rulers were likewise the butchers and cooks for their family or little clan. Is it on that account philosophical to say all monarchy and civil government are derived from butchery or cookery?

XCVI. Finally, some give as the origin of the state, force alone. They say, force makes right, which is about as true as that negative makes positive.

Many states have been conquered, usurpers have established dynasties of flourishing kingdoms; but because they have done so it is not proved that they originated or constituted the state. This confusion of ideas, however, has been mentioned already.

Charles Louis von Haller has acquired notoriety by his work entitled Restoration of Political Science, or Theory of the natural-social State opposed to the Chimera of the artificial-civil State (1820). The substance of his theory is this, that the government over men depends upon the will of God, and is known by natural (that is, physical) superiority (power), excluding therefore the jural principle. According to him, the prince is before the people, as the master is before the slave.

CHAPTER IX.

View of the Origin and Character of the State in the Middle Ages.—Dante.—Thomas More.—Bodinus.—The Netherlands first proclaim broadly that Monarchs are for the Benefit of the People, and may be deposed.—The Development of the Idea of the Sovereignty of the People owing to the Jesuits.—William Allen.—Persons.—Bellarmin.—Jesuits defend Regicide under certain Circumstances. — Mariana. — Suarez.— Luther.—Calvin. — Bacon. — English Revolution a great Period for liberal Ideas in Politics.—Puffendorf.—Leibnitz.—Montesquieu.—Hume.—Quesnay.—Turgot and Malherbes.—Mably.—Adam Smith.—Blackstone.—Delolme.—Bentham.—Hallam.—Revolution of 1830.

XCVII. The views which the ancients took of the origin of the state have been briefly mentioned, and I shall return to the subject. The state of things in the middle ages was such that political law could not be expected to be much cultivated. Views derived from the Old Testament, combined with the overspreading system of the church, and the religious principle as one of the most active agents in all public life in those periods, very naturally stood in the way of free inquiry into the elements of political law. The theory, however, differed more from practice during the middle ages than probably at any other period. On the one hand it was insisted upon that, as it is said in Proverbs viii. 15, " Per me reges regnant," perfect obedience is due to the monarchs, so long as they are faithful to the orthodox church; on the other hand, monarchs were nearly all the time contending with their vassals.

Dante's De Monarchia can hardly be mentioned here. Machiavelli touches upon many subjects relating to the state in his History of Florence, his Discourses on the First Decade of Livy, and his Prince. He was a man of most uncommon and penetrating mind;[1] but we cannot enumerate him with propriety among those who have directly promoted public or political law. Chancellor Sir Thomas More (Morus) attracted much attention by his Utopia, in which many questions of the highest importance to the citizen are discussed in a spirit far in advance of his time. Thomas More recommended, under Henry VIII., perfect freedom of conscience, which was a thing absolutely unknown then and for centuries afterwards. Joannes Bodinus or Bodin, a Frenchman, who was member of the States-General assembled at Blois in 1576, wrote *Six Livres de la République*, also in Latin, a work of much merit,[1] which to this day will not be studied without great profit, though it is affected by that peculiar and deceiving reasoning from analogy and on similes which continued to influence the minds even of very superior men long after this writer, and cannot be said to have vanished entirely even in our days, though the reform produced by Bacon has had a strong tendency to rend these tissues of false ratiocination.[2] Thus, Bodin's sixth book speaks of the distributive, commutative, and harmonic justice, shows that "royal monarchy" is harmony, and goes on to speak of the octave, fifth, and third in the state. This disposition to reason by analogy, and desire of finding the system and order of one thing always reflected in another, and fondness for logical symmetry—a

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[1] This powerful and grasping mind is, in my opinion, greatly misunderstood by a vast majority of all who know of his name. I may be excused, therefore,

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for referring to the article on him in the Encyclopædia Americana, where I have indicated my opinion of this great man.

[1] Les Six Livres de la République de J. Bodin, Angevin, Paris, 1580. (There is in the Congress library at Washington a copy of this date, which has belonged to Mr. Jefferson, with pencil-marks by his hand.) See Introduction générale à l'Histoire du Droit, par M. Lerminier, Avocat à la Cour royale de Paris, 1829, chap. v.

[2] As an instance may be mentioned the Monarchy of Man, by Sir John Eliot, appended to his life by John Foster, in the second volume of British Statesmen, in Lardner's Cabinet Cyclopædia. Nor are Sydney's writings at all free from this analogic train of ideas. Astrology, with all its macrocosm and microcosm, had, of course, a most powerful influence. I repeat for the youthful and ardent student, that too much care cannot be taken against confounding illustration with argument, the explanation with the basis. Quite different from misleading and seducing analogy is the zealously tracing out the same principle in apparently or really different spheres. It is a delightful employment of man's mind.

desire correct in its origin, namely, to find a harmony and correspondence in all things—strangely induced men to confound all departments, or, which amounts to the same thing, was in the way of properly separating them.

The commission by which Columbus was appointed Admiral of the Indies, and which contains the agreement between the monarch of Spain and himself regarding the expected profits, as recorded in the Codice Diplomatico (page 47, et seq.) already mentioned, begins with a purely theological declaration and essay on the Holy Trinity, the Virgin Mary, St. James, etc. It then treats of the order of things, the vicars of God (monarchs), with a discussion on the different species of justice, on three closely-printed pages, without any connection or reference whatever to the main subject.

XCVIII. "That mysterie, the prerogative of kings, which is a point so tender as it will hardly bear mention," as the noble Eliot wrote in the Tower (page 134 of the work mentioned in the last note), when imprisoned as the devoted advocate of a pure cause, was, nevertheless, frequently elucidated by the light of discerning minds, at an early period. Thus, there are some powerful sentences in Bracton. Yet the principle that monarchs are for the benefit of the people, and may be deposed if palpably and perseveringly opposed to their interest, was for the first time distinctly proclaimed and boldly acted out, in modern times, on a broad scale, when the Netherlands declared themselves independent of the crown of Spain.

The manifesto of the Utrecht Union, dated Hague, July 26, 1581, against the king of Spain, says that a prince is placed by God over his subjects to protect and watch over them, and that the subjects are not made for the benefit of the prince, to do slave service unto him, but the prince is made for the sake of the subjects, without whom he is no prince, to rule them fairly and paternally. If he neglect this, he must be considered not a ruler, but a tyrant, and in this case the subjects, and their representatives the estates, have the right to place some one else for their protection, especially after they have fruitlessly attempted to turn him from his tyrannical measures, and if, therefore, they have no other means of protecting their native liberty, for which they shall, according to the laws of nature, pledge their lives and all they possess.[1] But the development of this just idea into a theory was destined to come from a quarter from which it might have least been expected—from the Jesuits, one of the fundamental principles of whose constitution was absolute obedience to the pope. Thus it was this very absolute obedience to the pope, and the absolute supremacy of the true church, that is, of the Roman Catholic church, over all temporal government, which led them to the theory of the sovereignty of the people.

The English monarch had been declared supreme head of the Anglican church. William Allen, a Jesuit, consequently declares in his writing, Ad Persecutores Anglos pro Christianis Responsio (1582), "Si reges deo et dei populo fidem datam fregerint, vicissim populo non solum permittitur, sed etiam ab eo requiritur ut jubente Christi vicario, supremo nimirum populorum omnium pastore, ipse quoque fidem datam tali principi non servet." Persons, or Parsons, another English Jesuit of the time, adheres to the same principle, for instance, in his Andreæ Philopatri ad Elizabethæ Reginæ Edictum Responsio.[2] The distinguished Bellarmin adopted these views, and while he maintains, on the one hand, that the pope is supreme to all, to the council of the church and monarchs, whom, if religion require it, he may rightfully depose (see, for instance, his De Conciliorum Autoritate, c. 17, and De Romano Pontifice, v. iii.), he distinctly lays down, on the other hand, that "Jus divinum nulli homini particulari dedit hanc potestatem: ergo dedit multitudini: igitur potestas totius est multitudinis." And Mariana, one of the most distinguished Jesuit writers, says, "Neque respublica ita in principem jura potestatis transtulit, ut non sibi majorem reservarit potestatem." And Mariana was a Spaniard too. So willing are people to acknowledge any theory which is favorable to the objects next in view—at that time the deposition of Elizabeth, and in France the dethronement of Henry III. The combination is as singular as that the Belgian Catholics, who so long assisted the princes in their attempts to subdue the free Dutch, and were always for monarchy opposite to the republican Dutch, did lately profess the utmost liberal political views, in conjunction with the strictest Roman religious professions, far too ultra-roman for most other Catholics, merely because opposed to the Protestant Dutch.

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[1] The whole manifesto in Meteren, History of the Netherlands, f. 185, et seq.

[2] If a monarch forsakes the Catholic religion, to which he is bound by his baptismal vow and coronation oath, the subjects must drive him away. No. 162: "Non tantum licet, sed summa etiam juris divini necessitate ac præcepto, imo conscientiæ vinculo arctissimo et extremo animaram suarum periculo ac discrimine christianis omnibus hoc ipsum incumbit, si præstare rem possunt." No. 160: "Incumbit vero tum maxime, . . . cum res jam ab ecclesia ac supremo ejus moderatore, pontifice nimirum Romano, judicata est: ad illum enim ex officio pertinet religionis ac divini cultus incolumitati prospicere et leprosos a mundis ne inficiantur secernere."—See the Biographia Britannica respecting the life of Persons.

But the Jesuits went farther: they maintained the lawfulness of regicide if a tyrant or perverse heretic has possession of the throne. Those Catholics who professed that obedience is due to a lawful prince, though a heretic, were styled by them royalists and most severely attacked. See for instance Roswede, De Fide Hæret. servanda, Antwerp, 1610. The University of France reproached the Jesuits, in 1626, with having produced thirty authors who had preached disobedience to the prince if the pope orders it, and even regicide, because he is no longer king after excommunication. Suarez, Defensio Fidei Catholicæ, lib. b. c. 4, Col., 1614, says, "Posse regem privari regno, etiam illum interficiendo. . . . Si papa regem deponat, ab illis poterit expelli vel interfici, quibus ipse id commiserit. . . . Nam rex ipse jam non est rex, etc." Mariana, Heissius (Ad. Aphorismos Doctrinæ Jesuitar. Declarat. Apolog., Ingolstadt, 1609), Vasquez, Cotton, Molina, Keller, Lessius, Ribadeneyra, De las Salas, and numerous others, too many to be mentioned here, are of the same opinion.

It is a remarkable fact that when the three French estates were met in diet, in 1614, the third estate proposed a law according to which the king should be declared to possess his right of God, and that no one has a right to absolve his subjects of their allegiance, upon which every officer should take an oath, and that the clergy and after them the nobility opposed this proposition, because, as Cardinal du Perron said, subjects are free of their allegiance if the king becomes a heretic, adopts the religion of Mahomet or the doctrine of Arius. And this was after Henry IV. had been murdered by Ravaillac in 1610. It was precisely the same contest which obliged the English to insert in their declaration of right the oath forswearing "that damnable doctrine and position, that princes excommunicated or deposed by the pope, or any authority of the see of Rome, may be deprived or murdered by their subjects, or any other whatsoever, etc."

Luther, born, bred, and living in a monarchy, having to contend with various popular religious excesses, from an early period of the Reformation, and witnessing a sanguinary civil war (the peasant war), discarded all idea of making the extent or duration of obedience to the magistracy dependent in any way upon popular will. It seems in his writings that the idea of magistracy presented itself to his mind solely, and probably unconsciously to him, under the form of unlimited monarchy. He demanded almost unlimited obedience to the monarch in all civil matters, because he strictly severed religion from temporal government. This is his reason. It was different with Calvin. Living in a republic as he did, and in a small community, in which naturally and necessarily the various spheres of public action do not present themselves as strictly separated from one another as they may do in larger empires, he infused in his writings more of a republican spirit, and a desire to have the state influenced by religious fervor. Hence his followers in Holland, England, and Scotland did the same. Calvin relates in the preface to his first catechism—not the well-known little Geneva catechism—that he labored to induce the senate publicly to acknowledge it. He succeeded, and the citizens of Geneva were called upon, ten by ten, to take their oath upon it. "This action," adds Mr. Henry, "may be considered as the foundation of the later theocratic government. The citizens took the oath upon this confession as citizens, and he who opposed it, openly or not, was liable to civil and ecclesiastic penalty."[1] When Calvin settled at Geneva, the city was already rent by religious parties and disturbed by great commotions, which naturally influenced Calvin's actions.

We have seen what the doctrine of the Jesuits was respecting heretical princes. The Puritans, regarding episcopacy with passionate aversion, so that it appeared to them one of the worst species of heresies, maintained similar views as to heretical monarchs, though they did not agree with the Jesuits as to the lawfulness of regicide or tyrannicide. One of their writers, supposed to have been Lord Keeper Puckering, says, "that *all* persons, as well as meaner persons, must willingly be ruled and governed, and must obey those whom God has set over them, that it is the just authority of ecclesiastical magistrates, and must lick the dust off the feet of the church. That her majesty, being a child of the church, is subject to censures of excommunication by their elderships as well as any other people. That no man ought to aid, comfort, salute, or obey an excommunicated person; and that as long as any person is excommunicated, he cannot exercise the magistracy." (Brodie, vol. i. page 140, etc., where the notes are especially interesting and important.) The Covenanters and Presbyterians held similar views. It was observed at the time that their writers, Knox, Buchanan, Goodman, and others, singularly coincided in some momentous principles with the Jesuits. Collier, ad an. 1638.[2]

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[1] Page 175, vol. i. of the Life of John Calvin, the great Reformer, by Paul Henry, Pastor in Berlin, Hamburg, 1835. In German. Mr. Henry has made use of MSS. and unprinted letters of Calvin's in the libraries of Geneva and Zurich. Altogether the work is the production of great industry. The whole peculiar position of Geneva during the beginning of the Reformation may be seen from page 136 et seq.

[2] See an interesting notice of various Puritan and Presbyterian writers on this

The difference between Luther and Calvin, as to the points mentioned, is this: The German reformer, granting the fullest possible temporal power to the state, claimed full liberty in religious matters, and he almost alone in his whole age stands forth, as we have seen, an enemy to religious persecution, acting on principles which but centuries later became acknowledged.[1] Calvin, striving to unite religion and politics, makes religion absorb everything, and the church, that is, the ministers with the "saints," nearly supersede the state. Hence every deviation from the strict Calvinistic doctrine appeared to his followers as a state offence; hence the deep-rooted spirit of exclusiveness in his followers, for a long period in history.

XCIX. However erroneous and dangerous for the peace of society these views were, they nevertheless aided in arriving at the point that there is a principle above the monarch, that his right is not personally inherent, but only officially vested in him, and that the tie between prince and subjects is not absolute and indissoluble. Bacon, who contributed essentially to a restoration of science and threw so much light on various branches of knowledge by his De Augmentis Scientiarum, treats of political science, especially in the third chapter of the eighth book. (Comp. Hallam, Hist. of Lit., iii. 192.) But treasures are likewise contained in his Historia Regni Henrici

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subject in Hallam, Constitutional History of England, vol. i., note to pages 254 and 255, and, indeed, the whole of chapter iv. of that volume.

[1] Bancroft justly acknowledges this honorable trait in Luther, the opposite opinion of most English writers to the contrary. See note 3 to page 274, vol. i. of History of the United States, by George Bancroft, 2d ed., Boston, 1837. It is very remarkable that so few English authors, even of the best, have elevated themselves to a sufficiently high historic eminence, so as to view Luther wholly and fully, as one of the architects of history. His unbecoming dispute with Henry VIII. has so powerfully directed the attention of the English to the asperities in Luther's character, rather than to his greatness, that to this day they have not freed themselves of the effect. The occasional coarseness of Luther is not so indifferent as many of his admirers seem to believe, for it materially injured the cause of the Reformation: yet it is impossible not to prefer the violence of Luther's words to the sharpness of Calvin's doctrines respecting heretics.

VII., Sermones fideles de Sapientia Veterum, Dialogus de Bello Sacro, and In felicem memoriam Elizabethæ, Angliæ reginæ. The people now gain greater and greater prominence. He says, in the above chapter, "All who have written on laws have either treated their subject as philosophers or jurists. But the philosophers propose many fine-sounding but unpractical (ab usu remota) things. The lawyers, on the other hand, are so entirely possessed by the laws of their country, or the Roman or the canon law, that they do not use candid judgment, but argue as if in fetters. Indeed, this knowledge is properly a matter of statesmen, who know best the wants of human society, the welfare of the people, natural equity, the customs of nations and the various constitutions, and who, therefore, are able to decide concerning the laws according to the principles and precepts both of natural equity and political wisdom."[1] Remembering that a lawyer and philosopher wrote this very passage, we shall all agree with it, if not hastily misconstrued.

Hugo Grotius became about the same time the founder of international law, especially by his work De Jure Belli ac Pacis.[2] In the mean time had begun in England the struggle between prerogative and the authority of law. Then appeared those great men, Selden, Eliot, Pym, Hampden who fought a good fight for all civilized mankind. Respecting this whole period I recommend especially Brodie, Hallam, and Mackintosh on the Revolution of 1688, as well as Guizot's History of the English Revolution from Charles I. to James II. An eminent writer who distinguished himself by the liberal views he took of several important political subjects so much disrelished at his time, was Hooker, in his Ecclesiastical Polity, especially in the eighth book. The views of this worthy author on the origin of government are so far correct as he derives it originally from consent, but he deduces from this consent the contract, which, of course, misled him, as so many others, to erroneous conclusions. This eighth book is read by fewer still, than the first books of the Ecclesiastical Polity, yet is even now fully worthy of a perusal.

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[1] "Qui de legibus scripserunt, omnes, vel tanquam philosophi, vel tanquam jurisconsulti, argumentum illud tractaverunt: Atque philosophi proponunt pulchra, sed ab usu remota. Jurisconsulti, autem, suæ quisque patriæ legum, vel etiam Romanarum, aut Pontificiarum, placitis obnoxii et addicti, judicio sincero non utuntur, sed tanquam e vinculis sermocinantur. Certe cognitio ista ad viros civiles proprie spectat, qui optime norunt quid ferat societas humana, quid salus populi, quid æquitas naturalis, quid gentium mores, quid rerum publicarum formæ diversæ; ideoque possint de legibus, ex principiis et præceptis, tam æquitatis naturalis, quam politices, decernere."

This "e vinculis sermocinari" is an uncommonly fine and true expression. Every professional man, whatever his profession be, ought to remember it. The previous parts of this work, however, will have sufficiently shown how despicable the author holds all endeavors to persuade the people that wisdom in politics comes intuitively, without industry, without earnest application, and is, as it were, a species of knowledge belonging particularly to ignorance.

[2] * This great writer, and, what is more, great citizen and great man, has been depreciated by minds infinitely below him in grasp, power, learning, acumen, and philosophic architecture (for instance Paley, preface to his Moral and Political Philosophy). This is not the place to show how decidedly that great

Hobbes has been mentioned already. Puffendorf, who does not follow Hobbes's idea of men's warring against one another in their supposed natural state, makes the innate desire of man for society the foundation of the family, from which, by three different contracts, the state is formed. Leibnitz declared himself against natural law as then taught; he

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mind affected all successive periods to our own times, and how millions and millions have enjoyed the civilizing fruits of his work even in the fearful periods of war, unconscious to them. It would form a peculiarly fine subject for an essay; but I cannot conclude this note without mentioning, likewise, that so prominent a writer as Sir James Mackintosh has paid him a befitting tribute in his Discourse on the Study of the Law of Nature and Nations. I wish I had room enough to copy the whole passage. I have not, but I beg to quote at least a few lines of it. Grotius is blamed for having quoted poets, etc. Mackintosh says, "But where are those feelings and that judgment recorded and observed? In those very writings which Grotius is gravely blamed for having quoted. The usages and laws of nations, the events of history, the opinions of philosophers, the sentiments of orators and poets, as well as the observation of common life, are, in truth, the materials out of which the science of morality is formed; and those who neglect them are justly chargeable with a vain attempt to philosophize without regard to fact and experience, the sole foundations of all true philosophy."

considered Hobbes's and Puffendorf's theories as but fanciful dreams. Of Filmer we have spoken, and we have seen how Locke followed Puffendorf in the first important points. Algernon Sidney and Milton adopted the idea of the contract, and founded upon it the sovereignty of the people. Rousseau, in his Social Contract, adopts likewise the original contract, but the step he made was this, that he declared the sovereignty of the people inalienable, so that the people in a monarchy remain still, in the aggregate, the sovereign. Soon after the declaration of independence of the United States, another important era in political history ensued. The sovereignty of the people was pronounced, and not long after declared by the first French revolution.

Important in the literature of political law is Montesquieu, on account of his works, the Spirit of the Laws, Considerations on the Increase and Downfall of the Roman State, and his Persian Letters. Bodin, Machiavelli, and the English authors lent him many ideas, though he has not mentioned them. His works, especially the first, are replete with shrewd and not unfrequently profound remarks; but sometimes his brilliancy blinds, and the actual truth is not seen. He has given currency to certain views, and even sayings, which are not altogether well founded.[1] He adheres to the division of the three powers, which Aristotle had adopted. Hume's influence upon politics was not unimportant. The Physiocrats, in France, founded by Quesnay, physician to Louis XV., and among whom we must count so many distinguished Frenchmen, especially Turgot and Malherbes, the well-meaning and pure-hearted first ministers of Louis XVI., acquired no inconsiderable importance in politics, as they were led by their political economy to insist upon the abolition of the exemption of some classes from taxation, on free trade, and on abolition of bondage and of feudal relations. Mably, already mentioned, wrote a Droit public de l'Europe, Observations sur l'Histoire de France, and several other works, which gave him considerable reputation. Adam Smith, Blackstone, Delolme, Hallam, Bentham, have all contributed to awaken or settle important political ideas. Filangieri, an Italian, wrote a Science of Legislation. He says, monarchs and people are natural enemies, and nobility is essential to reconcile both. Much respecting public law is to be learned from the works of Paul Sarpi, especially his account of the differences between Pope Paul V. and the republic of Venice. (Storia particolare delle cose passate tra il sommo Pontefice Paolo V e la Serenis. Rep. di Venezia, negli anni 1605–7.) If allowed to venture the opinion, I would say that, if Italy ever be regenerated, it would seem that Sarpi's and Vico's works will be found to have contributed much to so great, so noble, and so desirable an end.

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[1] Certain commonplaces fasten for a time upon mankind, sometimes because true, sometimes because half-true, at others because they have a captivating sound, are tersely expressed, and borrow the graces of alliteration or pungency of antithesis, and yet are not true after all. Montesquieu has said, "no monarch, no nobility; no nobility, no monarch." Yet there was nobility, and a very noble nobility, in Venice, without a monarch; there was nobility in the republican Netherlands; while, on the other hand, Norway has a monarchy without nobility.

In America, no work treating solely and systematically either of natural law or the existing public law has as yet appeared; but I would mention as works treating of subjects belonging to these departments, or intimately connected with them, The Federalist, the writings of Ames, Hamilton, and Jefferson, Tucker's Blackstone, Kent's Commentaries, Story's Commentaries on the Constitution of the United States, and Wheaton on International Law. (See Political and Legal Hermeneutics.) The Journal of Congress before the adoption of the constitution of the United States, and the Debates in the several state conventions on the adoption of the Federal Constitution, 4 vols., published by congress, 1836, are works of much importance. The work of President Madison, on the debates of the first congress, now publishing by congress, will, of course, contain many points of high interest relating to our subject.

The great epochs which have had the most decided influence on public law are the struggle of the Netherlands against the crown of Spain, the two English revolutions (many important principles of the second of which were never more clearly exhibited than when the prince of Wales, afterwards George IV., insisted upon having the regency, at the first alienation of mind of his father; on which occasion, what is not a little interesting, the more liberal principles were maintained by the tories, because they had to show that parliament represented the people and had a voice in the settlement of the regency); the American revolution or war of independence, the first French revolution, and the epoch of that theory of legitimacy which was peculiar to the writers under Napoleon. During the time of the restoration of the elder Bourbons, men like De Bonald and De Maistre brought forth their strange mixtures of mysticism, Catholicism, and absolutism. The rights of the people are favors of the monarchs, says Count de Maistre. Since the French revolution of 1830, the theory upon which the government is acknowledged to be built has materially changed in that country. French literature has teemed with political works, but I am not able to give a survey of them so shortly after their appearance. Of the later or recent Germans I will mention only Wolf, Kant, Fichte, Hegel, Pölitz, Raumer.[1]

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[1] A general view of the progress of public law is given with spirit in L. Hoffman's Inquiries into the most important Affairs of Man as Citizen and Cosmopolite (German), Deuxponts, 1830, 2 vols.—a work, however, from which I differ in more than one point.

CHAPTER X.

Various Standards of great Political Periods.—The Government must depend upon given Circumstances and Materials.—Which is the best Government?—Errors as to an Ideal Government.—Governments cannot be made in the Closet, or decreed.—Characteristics of a good Government.—Civil Liberty.—What it is.—Errors respecting it.—Majority and Minority.—The Majority are not the People.—The Athenians checked their own Power.—Great and true Value of Representative Government.—Whoever has the Power, One, Manv, or the Majority, may abuse it, and must be checked.

C. Since government is that institution, or organism, by which the state endeavors to obtain and secure the objects of the state, the excellence of government naturally depends upon what these objects are, and upon the people for whom it exists and through whom it operates. People, in this sense, does not only mean the respective individuals, separate and for themselves, but in the various relations in which, according to place and time, they must move. Generally speaking, the object of the state is the aiding society in obtaining the highest degree of civilization, or the greatest possible development of man, both by removing obstacles, or assisting directly, in all cases in which the member of society ought not, cannot, or will not act individually and upon his own responsibility. But Rome was not built in one day; civilization resembles neither a mushroom nor a hot-house plant, but it is like a garden, to be cultivated with wisdom, that is, patiently, perseveringly, and judiciously, keeping steadily in view the main object for which the garden may have been laid out, with constant reference to what plants may best answer our ends, considering the given soil and climate. Mankind was not developed in one day, nor is there one absolute prize in the lists of history to be run for; the moral growth of mankind is gradual, constant, and various, each time and each place affording new conditions and giving new problems.

Each great period in history, that is, each period in which the activity of man is directed with peculiar intensity towards the obtaining of some great end, the realization of some great idea, carries within it its own standard. We become, therefore, in the same degree unjust, and obtain a narrow and distorted view of truth, as we apply the standard of one conspicuous period, a period which opens the gates of a new era, to another. The legislation of Moses, whose object was to lead bondsmen into liberty, cannot be correctly understood in judging it by the standard of the Spartan constitution. The laws digested and amended by Lycurgus eight hundred years before Christ, and for a small state, do not give us the test to try the excellence or badness of the reign of Charlemagne, eight hundred years after Christ, over a variety of discordant and unruly tribes, whose first essential want was pacification. England under Elizabeth, with a bull of Pius V. hanging over her, and preceded by monarchs so violent as Henry VIII. and Mary, had to strive for different objects than under the administration of an Earl Grey.

CI. Does this consideration lead to mere expediency, and is there no stable principle to be ascertained in politics? By no means. The whole preceding part of this work must show the contrary. We can and must ascertain those principles which, from the nature of men and by ample experience, show themselves to be essential to the obtaining of the highest ends; for instance, security of life, limb, and property. Yet these, and especially the last, are at times sacrificed to higher objects, and always subjected to the most various modifications. We must inquire, therefore, whether that great object which is exhibited as forming the problem of the period is a good one or not; after that, it is for wisdom to judge how it is best to be obtained by the given means; for others than the given ones are not at our disposal. "Neither are laws," says Selden, "thus to be compared" (meaning by an absolute standard). "Those which best fit the state wherein they are, clearly deserve the name of the best laws." (Note to Fortescue, De Laud. Leg. Angl., chap. xviii., note g, edit. of 1741.) This is very different from Pope's verses,—

> "For forms of government let fools contest;
> That which is best administered is best,"—

a saying which, on account of its boldness and convenience, both for the ignorant and indolent as well as for those who find high-handed measures more suitable to their interest than the restraints of the law, has proved as popular as it is radically wrong. For a bad law cannot be administered well: no Alfred could administer well the former Irish Brehon or the ancient French law, according to which the third estate was made and existed only to support the two others, which nevertheless held nearly all the land.[1] In fact, this fallacious dictum seeks all good government in the personality of the governors, and is nothing less than the Asiatic principle; while the very object of good fundamental laws and institutions is to force, as far as possible, the various personal peculiarities which are purely adventitious, that is, uncontrollable by us as to their origin, into co-operation in obtaining what has been recognized as an essential end and object.

CII. The objects of the state may be divided into two classes: stable ones and those which change. The stable objects are those which must ever be considered as the indispensable requisites of all civilization and all the higher ends, that is, as has been mentioned several times, safety of person and property, uninterrupted administration of justice. No monarch has yet existed, over however uncivilized a horde he may have ruled, who has not considered it a high claim to the gratitude of his people that he has dealt out even-handed justice, if he could claim it at all. If we see such a state of things as that which is designated, by what ought to be called historical irony, as the *jus manuarium*, but which more broadly and correctly bears in German the name of fist-law (Faustrecht), we must absolutely pronounce it a bad government, if government we can call it at all; because it fails to secure one of the unchangeable objects of all government, just as that architecture which effects the building of no shelter at all would be a bad one, whatever the materials or peculiar object in view might be. The changing objects of the state vary according to the peculiar genius or wants of the people or society, the soil, the degree of civilization, the condition of their neighbors, and whatever else may powerfully influence the state of a certain society. Government, therefore, which has to obtain these ends with these materials, must vary accordingly. If the materials, I repeat, are Jews, strongly affected by the views of the Egyptians, and in a state of barbarity, and the object is to lead them through a desert, or to conquer a country where they may become agriculturists, or to preserve monotheism amidst surrounding polytheism, the contrivance, called government, to obtain these objects, must be very different from what it has to be with a society or state, whose chief object is to ward off the inroad of a conquering and devastating tribe, on a small island, as that of the knights of St. John on the island of Rhodes was, or with a society possessing, by way of inheritance, the institutions of England, and one of whose objects is to people, cultivate, and spread civilization over an extensive part of a vast and fertile continent, as is the case with the people of the United States. If the object is to reform and reorganize the debased and nerveless population of a large country in a burning climate, as that of Egypt at present, the government must essentially differ from that of an industrious people who, however, must unitedly struggle against the inroads of the sea if they mean to do it effectually, such as the Dutch. If, in the course of progressive civilization, one of the most inspiring and impelling elements of society is the beautiful, as was the case with Greece, the government must differ from that of a people who must defend themselves daily against the attacks of the Arabians or Moors, as the Spaniards were obliged to do, or of a people who live where, with all possible individual exertion, it is difficult to maintain life, as is the case in Iceland.

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[1] At the diet of Tours, in 1433, the clergy and nobility insisted that the third estate should pay the expenses of all three estates, incurred by travelling to and living at the diet, because made to support the two other estates. [?]

If one of the fundamental objects of all government is to deal out even-handed justice, the organization of the judiciary department must be very different among a people where witnesses can be habitually bought, or where part of the population live in a semi-savage state, as is the case with the lazzaroni in Naples,[1] from what it may be or ought to be among a people who descend from a nation that have been accustomed for centuries to a high respect of justice and the "majesty of the law," as is the case with the Americans, descending, as they do, from the English. The government of a narrow and extended country must differ from that of a compact and well-rounded one; that of a people who generally feel deeply interested in education and industry, from that which has to be roused from the inertness and indifference of semi-barbarism, as the Russians under Peter the Great; that of a country in which different races live, differing in color, disposition, and degree of civilization, cannot be the same with that of another peopled by one race, the individuals of which stand comparatively on a level of civilization, desires, habits, and wants. One of the most important of the given circumstances which determine the choice of means in governing must always consist of the means of government and laws made use of by the preceding generations.

CIII. All discussions, therefore, on the excellence of governments merely on abstract principles and without reference to the given circumstances, are futile. The science of government is no more an abstract one than architecture. The architect, without knowledge of pure mechanics and mathematics in general, will make but a poor bungler, yet it is of primary importance to him, before he can either draw the plan of a building or take any specific measure, to know what materials he has at his disposal, whether wood, bricks, or marble, the climate which will operate on them, the ground on which he has to build, and the object for which the building is intended. So has the statesman to acquaint himself thoroughly with ethics, natural law, and philosophy in general, yet he must not forget his materials when he comes to the practical question, nor the object of his society.

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[1] The French, having conquered, among other countries, the south of Italy, introduced the trial by jury, but they soon were obliged to abolish it again, on account of the venality of the people, as well as their general unfitness. One of the wise measures of the government of Joseph Bonaparte in Naples was the attempt at domesticating the lazzaroni. They were employed in various ways, and the wages were partly paid in mattresses or other house-utensils, in order, before all, to accustom them to a civilized domestic life, and to break them of the habit of sleeping in the open air, in gateways, etc.

The political writers who have tried to settle the question of government without reference to the material, the age, and the wants of the people, have fallen into great errors. Some have defended monarchy as the ideal of government; others have thought the principle that every male adult, without exception, shall have an equal right to vote, the only just and philosophical ground on which a true government can be founded. On its own ground alone, however, in the abstract I mean, the principle of universal suffrage, by which men are valued solely by their number, is no more philosophical than valuing them according to any other principle, that of property, size, or weight. It might be maintained that the large man consumes more than the small, consequently he contributes more to the expense of government, therefore he is entitled to a larger share in government. There are conditions of society in which property forms a sound basis of representation, and the soundest that they allow of; but is this so on its own abstract ground? Does not the labor of an industrious man, or his readiness to defend the state by exposing his life, give an equally well-founded title to the right of being represented, and an active share in this representation? Whoever has adopted one principle in the abstract as the only admissible basis of government has been forced into the strangest incongruities.

CIV. That there are immutable political principles in governments according to which we can at once pronounce some to be bad, or, at the utmost, to be called for only by way of rapid transition, is evident. That, on the other hand, there are certain important principles of good government which will steadily show themselves clearer with the advance of civilization, is equally evident; and, finally, that experience and mature reflection upon it entitle us to declare certain forms and features as vastly eligible for a certain period and a certain degree of national development, I hold to be equally true. Such, for instance, I consider to be, for the civilized nations of our times, the exalted principle of representative government, or that of two chambers. If experience shows us that the adoption of certain principles always leads the people towards certain desirable ends, if they have once arrived at a certain point of political civilization, we are justly entitled to declare it with regard to a people in such a state of civilization, and inhabiting such or such an extent of country, a salutary one. But who would like to be tried by a jury of Bushmen, or insist upon the introduction of popular representation with two chambers in Turkestan, or annual meetings of parliament in China?

Nor do I maintain that it is impossible to settle certain general principles in politics. One of these, for instance, is, I take it to be, that any class of men who have the power to make themselves politically felt and are conscious of it, have thereby a right to influence government proportionally. I do not say that those who have not the power shall on no condition be entitled to this right. This would be a wrong and very dangerous conclusion. The cities had a right to rise into political influence in the middle ages; the peasants had a right to demand liberty with its consequences. It is the very province of the science of politics proper to discuss and trace out these principles; and I shall find occasion to touch upon a few in the sequel of this volume, as I have done already in the previous part, when speaking of power.

Governments are not made in the closet; you may proclaim a republic, you may write a constitution on parchment, but does it work? is it a living thing? Was France ever a republic, in despite of her many constitutions proclaiming her to be such? She remained a concentrated government, and is now only gradually changing her character. Lord Erskine says of the first English revolution, "Monarchy was only suspended, not abolished." Of the French it might be said that absolute monarchy changed the name; and of the United States we may well say, republicanism was only veiled as long as they were colonies. I do not indeed mean to say that no government can change, but it cannot leap over into something else, nor ever become anything but what is conditioned by the existing materials.

CV. Which is the best government? That government which fulfils best its purpose, by which, however, is not meant a momentarily so-called flourishing state only. For such a state of things may, at times, poison the very life-blood of a state, and undermine instead of leading to a higher degree of liberty, the main object of all governments, because greater liberty is but greater protection—protection of free individual action.

To speak of civilized nations, that government ought to be called good which amply protects and in which every man can obtain justice; which for its existence does not require a class by whose privileges others are injured, be this a wrongly privileged aristocracy, or democracy, or party. That government is the best under which we find the greatest number of laws and institutions, essential to the state, founded, developed, or secured, with which the nation works heart and hand for just and great ends;[1] which forms one living organism with the people, and with which in times of danger they join with true devotion, considering their sacrifices to it as sacrifices to the common weal only; that government which has in itself the peculiar expansiveness as well as the organization which not only allows, but necessarily leads to, farther and farther political development, and goes on raising the individual as a political being. When we see the flourishing state of a nation essentially connected with institutions, and when we find the fundamental institutions with an expansive character, not of a cramping obsoleteness, then we may have a right to suppose that the government is good.[1] Seek not protection or liberty in mere forms. No political form that can be imagined has not at times been oppressive and ruinous. Life, true and high action, is the thing we must look for; mere form kills.

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[1] Popularity is far from constituting the sole index of good government, not even the universal readiness of the people to share the dangers of war. The wars of the Mongols were essentially national and not cabinet wars; but was the Mongol government a good one?

CVI. That government is the best which secures most effectually all the stable objects of the state, and aids most wisely in obtaining all the others; which procures in the calmest and yet most efficient way all things that must be obtained for society, and does not oblige the people frequently to resort to sudden and violent actions in order to obtain what needs must be obtained by united action, and which government, nevertheless, fails to procure; that government which interferes least with my individuality and yet affords to society the best opportunity for the highest industrial and mental action; in fine, that government which continually remembers that every individual has an undeniable right to the greatest possible individual activity, and, therefore, protects against all interference with him, and secures to him all that which is necessary to him as a social being. Wherever we see great personal security and high social action, wherever individual and social rights and claims are best secured and promoted, there is the best government. Where personal and social activity is paralyzed, where the mental life of society is deadened, where the individual receives no equivalent for his sacrifices, where one part of society is sacrificed to another, that is, where no equivalent is received; where a few control and arrogate government to themselves, like the property which belongs to them; where, above all, the stable objects of all governments are but partially secured, or, if entirely, only for a few, and where no industrial, moral, and mental expansion of society exists; but, on the contrary, where measures of government have a benumbing effect, where protection depends chiefly upon the personality of those in authority, and not upon well-grounded institutions and laws, which are conceived not with regard to their operation and salutary effect but on account of extraneous and unessential considerations; where we see numerous laws issued, but without action and soon forgotten, nominal institutions without roots in the history of the nation, —there is a bad government.

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[1] There are certain meteoric periods in the history of some nations, which pass quickly, and leave no life, as the kindling ray of the sun does, though he may vanish for a time from the heavens. There are few more glorious epochs in the annals of any people than that of the Portuguese which begins with the striving, gifted, enlightened, and enlightening prince Henry the Navigator, and winds up with Louis Camoens, that noble martyr of genius, and includes the invention of the sextant, vast discoveries, heroic deeds, enlargement of knowledge, and the names of Diaz, Gama, Cabral, Andrada, and Albuquerque. Yet the period was not only, historically speaking, brief, but dark night succeeded, and the Portuguese nation has ever since presented a painful instance of a misruled people. They had no sound institutions. Neither national riches, nor glorious names, nor heroic deeds, nor brilliant literature, nor absence of commotion alone, are capable of saving a nation, or furnish us, of themselves and without reference to something else, with a safe exponent of good government.

CVII. Here we have to guard ourselves against two errors. The high intellectual or social activity of a part of society may be, and often has been, obtained by a sacrifice of the most essential interests of by far the greater majority of the people. I speak of those brilliant governments which blind the superficial observer, such as that of Louis XIV. They have an equally dangerous effect upon the hasty observer of after-times, who seizes only on what is striking and does not suspect the sacrifices which were necessary to produce it. A palace of a Louis XIV. is remembered long after the squalid population which had to pay taxes towards it has been forgotten.

CVIII. Yet we must be careful not to take the physical well-being, either by way of physical comfort or personal and physical security—two most important objects of government, indeed, because they are the foundation for higher objects—as its sole end or only index of excellence. It was a true saying of Plato's, "Not to live, but to live nobly is the object." Personal security against bodily harm, for instance, may be obtained together with personal liberty, and forms part of it, in which case it is excellent; or it may be obtained at the price of personal liberty. An extensive preventive police may, by fettering all free individual action, prevent many offences indeed, but mere physical security is not the object of government. Society stands in need of it, because without it society cannot obtain its highest object—civilization, which includes free, individual activity. There is peace indeed in a prison. If you put a man in irons he cannot do harm, it is true, but neither can he do good. The so-called happiness principle, if happiness be rightly understood, is correct, but a most mischievous one if we limit it to physical well-being only, as, certainly, it is taken by many of its advocates. Is this happiness indeed the last term to be striven for? If so, why does every one feel in the course of his life called upon to give it up to higher objects? Is this happiness always the means through which we reach the highest objects of man? or is not trouble, sacrifice, and even woe, that means in many cases? Has a nation not to sacrifice happiness to liberty? Is it merely the avoiding of higher taxes which shall prompt a people to bold, high, national actions?

CIX. Had not this erroneous position been frequently taken, it would not so often have been asserted that the best government is an absolute monarchy with a truly just and wise king. This is a most radical error. An absolute government, which forces to act, and does not animate and fructify the principle of self-action, undermines the state by its very character, and exposes to the greatest danger, both by the death of the just and wise ruler, who cannot insure the same qualities in his successor, and by blinding the people, who, content with their physical welfare and perhaps the brilliant energy of the government, are ready to abandon all law and all institutions, placing implicit confidence in their rulers, until recovery is too late. "Where the security is no more than personal, there may be a good monarch, but can be no good commonwealth." (Harrington's Political Aphorisms.)

CX. So unfounded is the error, that the very opposite may be supported with far greater truth; for history shows that it is the wise government, tending towards absolutism, which is most dangerous to the people, not the galling, openly or cruelly tyrannical one. This rouses, the other lulls to sleep. That a high-handed absolutism may be the best government for the society at large, as a stage of transition only, under peculiar circumstances, cannot be denied. When the ruler is far in advance of a barbarous or semi-barbarous nation, as was the case with Peter the Great, when discordant and heterogeneous elements have to be united and forced into a uniform action, as was the case after the migration of nations, when a society infested with swarming banditti, in open war with all authority, has to be rescued, as central Italy under Pope Gregory XIII., when civil war has torn the country and a restless party foments conspiracies, as under Cromwell, bold, high-handed measures are often indispensable and the only salutary ones; but they form the exceptions, and cannot lead to the rule, just mentioned, that the best government would be absolutism in the hands of a good ruler. If a ruler, even in cases like the above, neglects to awaken the principle of civil life, if, while with a high hand he pursues the general welfare, he disregards private rights, he still omits as much as he performs. For, instead of inspiring society with the breath of life, he deprives it of it, and, consequently, renders future generations unable to obtain those objects for which all absolutism, even the best, can be but a temporary means. If, then, we find it asserted that that government is the best which best provides for the substantial interests of the people, we shall know how far to yield assent. Everything depends upon what we understand by substantial interests. If they mean what has been shown to be the true object of society, it is most true, for all forms are but means or necessary effects of that which is essential. If by substantial interest nothing be meant but personal safety, absence of danger, and plenty, even at the price of individuality, of mental free action, it is not true. Rather all the danger of error, than that torpid state where there is neither truth nor error, but mere political stagnation.

" Generally speaking," says Schiller, in his Lecture on the Legislation of Lycurgus and Solon, " we may lay it down as a rule, in judging of political institutions, that they are good and praiseworthy only in as far as they further the development of all the faculties with which man has been endowed, in as far as they promote the progress of civilization, or at least do not impede it. This is equally true of religious as of political laws; both are objectionable if they fetter a faculty of the human mind, if they impose upon it, in any sphere, a standing still. A law, for instance, by which a nation was bound unalterably to retain a system of dogmatics which appeared to it at a certain period as the best, would be a criminal attempt against humanity, and no intention, however plausible, could justify this. It would be directly against the highest good, the highest object of society."

CXI. One of the great errors into which philosophical politicians have frequently fallen, in consequence of seeking for a government absolutely and abstractedly good, is the idea that, the people being themselves the object of all government, as well as the real source of power, the best government will be there where the people have absolute power. Let us investigate this subject with the attention and sincerity which its magnitude requires.

It is asserted that if the people for whom alone the government exists have the sole power, they clearly will not act to their own injury. This is erroneous. First, it would apply to such people only as are sufficiently enlightened to know what is their true interest. The Caffres, and, indeed, I believe all savage tribes, have essentially what are called popular governments. Yet they do not rise out of their state of barbarity; no one would consider this government preferable to one which might be less popular but would force them to keep the peace. Secondly, this proposition rests, like so many others, on a deception, owing to the personification of an idea, which means an aggregate, not an abstract. Who are the people? Is it one individual, or a number of individuals, called, for convenience' sake, by one name, or because we imagine it as a body of individuals who in regard to many and most essential points, but not to all, are impelled by a common interest? Are the people an aggregate of a number of individuals with one mind, one will, one impulse, or do the people consist of a majority and a minority? Giving unbounded power to the people means, then, nothing less than giving unbounded power to a majority; for, as a matter of course, the majority must possess it, if the people have it at all. We are repeatedly told that the people can do what they like; but have they the right to deprive the minority of their property, as they have done on various occasions, or to enslave them, to kill them, as the majority of Corcyra did, during the Peloponnesian war (Thucyd., iii. 70, 85), or the French during the first revolution; for though the executions during the reign of terror first took place after sham trials, towards its end it was decided that being suspected should suffice to mark the victim, which, in plain English, meant that being in the minority is a capital crime. Have the majority the right to deprive the minority of speech? in short, to deprive them of any essential attribute of man, or to deny them any of the main rights of the citizen and chief objects of the state? Have they the right, however frequently it may have been done, to arrogate to themselves the name of the people, and to treat every one of the minority as if not belonging to the people?

CXII. Our definition of liberty must necessarily depend upon the view we take of the state and its objects, so that the ancients sought liberty in something different from what appears to constitute the essence of modern liberty, a subject to which I shall revert on a subsequent page. But whatever liberty may be—and it certainly consists as much in the absence of restraint and interference with actions which individuals may practise, as in protection, that is, protection against individual violators of my rights, against the elements, if they defy individual exertion, and against anything which interferes with my being truly that which I ought to be, as far as I alone cannot remove it—whatever liberty may be, it is of little political value to nations, unless something definite, distinct ideas embodied in palpable institutions, or fundamental laws, be meant by it;—except by way of rousing degenerate generations. In this case even a vague notion of liberty may be of much service, in order to throw the first spark into torpid hearts.

As long as liberty remains a generality, its love a longing and feeling rather than a definite conception, it is a poetic principle, capable of prompting to generous actions, but of little use as to the proper conception of what these actions ought to be. It is in institutions that liberty is embodied; and for what end are these institutions established? To promote and to protect. To protect whom? Him that wants protection. Who wants protection? Most of all, he who does not agree with those that have the power. One of the truest signs and safest exponents of substantial liberty, therefore, is the unwavering protection which the individual, opposed to power, the minority, enjoys—in a word, it is the absence of absolute power.

A late writer strangely asserted that liberty exists in the degree that representation and constituency agree—a puerile assertion, which it would be superfluous to mention, had not the same writer issued, of late, various works on subjects connected with politics, claiming, probably, the same attention of the public for them which his previous productions of an entirely different kind have enjoyed. If that assertion be true, it either exists not at all where there is no representation, and the body of the people act directly, or it exists always in this case. But though an overwhelming majority sentenced Socrates for blasphemy, for him there was in that case no liberty at Athens. Suppose, moreover, the will of the constituents is wicked, tyrannical, does liberty still exist because their representatives are perfectly willing to act up to their desire? A strange sort of liberty, which solely depends upon something external and relative—the agreement of two parties; and not upon something essential and positive. This untenable view is another misconception arising out of the primary error of a natural state of man, and a natural liberty, in which man is believed to be absolutely without any restraint, except his own conscience and understanding, which, however, it would appear, must yet be very weak. Civil liberty, therefore, is judged by a negative standard, that is, it is believed the less you are required to give up of that original and perfect natural liberty, the greater the amount of civil liberty. The idea is wrong, radically wrong. Liberty, like everything else of a political character, necessary and natural to man and noble to be striven for, arises out of the development of society. Man, in that supposed state of natural liberty which is nothing but the roving state, is, on the contrary, in a state of great submission: he is the slave and servant of the elements; matter masters his mind; he is exposed to the wrongs of every enemy from without, and dependent upon his own unregulated mind. This is not liberty; it is plain barbarism. Liberty is materially of a civic character. Doubtless I cannot live a day without feeling the restraint of law, that is, the effect of my living with others. Now, inquire whether this restraint is the giving up of something you may be supposed to have once possessed entire, or whether the whole is of social origin. You are not allowed to speak against the reputation of a neighbor. This is a restraint; had man ever the liberty to speak against his neighbor what he liked? In that state of nature he had no neighbors. He was, questionless, allowed, if ever he lived in that state, to mutter to himself what he chose; so you may now say against your neighbor what you like, provided no ear but your own hear it.

Liberty, I would say, exists in the degree in which my action and activity in all just and right things is untrammelled, in the protection of my individual rights, and in the same degree as I am not sacrificed to others.

But, it may be objected, can the majority be supposed to desire anything wrong?

CXIII. Let us calmly and with truthfulness consider history and the nature of man, and we shall find the answer. We all acknowledge that man is a frail being, subject to a thousand sinister influences; we all acknowledge that wise men are infinitely rarer than unwise; yet shall the aggregate of these individuals constitute a wise, just, dispassionate body. Where is reason in this argument? Is there more reason in it than to expect wisdom from the accident of birth, in hereditary monarchy? The people, the majority, are subject to sudden impulses, to passion, fear, panic,[1] revenge, love of power, pride, error, fanaticism, as individuals are, for they are individuals; and they are as much obliged to check their united power as that of small bodies and individuals must be checked. Socrates, when in anger, was in the habit of counting quietly a large number, to allow time to his excitement to pass over. He was a wise man indeed. A law of Alphonso II. of Spain decrees that a sentence of death or mutilation shall not be executed until after twenty days, so that, should it have been pronounced in wrath, there might be time for reconsideration. It was a wise law, at a period when the necessary guarantees of caution in the trial itself had not yet been discovered. The people at large stand as much in need of retarding processes as that Grecian sage or those Spanish courts. The Athenians distrusted their own power, and a citizen who proposed anything against the established and fundamental law was punishable. He remained so, even if his proposition had been adopted, for one whole year, and the *παρανόμων γραφή* could reach him, which, therefore, was considered by the Athenians as the great protection of the state. Whatever we may think of the means, we cannot but agree in respecting the principle.[1] In that same immortal city, to which mankind owe so much more than to any other, no law affecting a single citizen could be passed, if six thousand votes could not be collected in favor of the same.[2] And we must never forget one fact, of great importance respecting popular excitement, whether it consist in panic or anything else, that if it be true, on the one hand, that large numbers cannot in their nature be so easily influenced, in many cases, as individuals, it is likewise true, on the other hand, that all men are apt to mistake repetition for confirmation. If I leave my house, and twenty persons speak to me successively of the same fact or impression, it has a strong tendency to make me believe what they say; yet all these twenty persons may have derived their first impression directly or indirectly from the same original source, which may or may not have been correct. Hence the incalculable power of rumors, the surprising beliefs and many of the actions of great masses, at all times of general excitement, which the historian of after-times is unable to trace back to any satisfactory source, or of which it is difficult for him to conceive even how they were possible. The beginning of the first French revolution furnishes several striking instances. (See the Memoirs, also Carlyle, Thiers, etc.) Rumor moves on like an avalanche.

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[1] When the Asiatic cholera raged in Hungary, the peasants, the vast majority of the population, killed the nobility with excruciating torments, because the deluded people believed that the wells had been poisoned. Something simiiar took place in Paris, and quite lately several Englishmen were murdered by the populace of Rome, because suspected of wickedly charming some inoffensive children.

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[1] Demosth. ag. Timocrates, 748, 9; Æsch. ag. Ctesiphon, 367. The orators speak continually of the *παρανόμων γραϕή*.

[2] Andocides on the mysteries, p. 42. Comp. Demosthenes ag. Aristocrates, p. 649, 4, p. 692, 25, and several other passages.

All that Virgil said of the ancient Fama holds likewise of the modern:

> "Mobilitate viget, viresque adquirit eundo;
> Parva motu primo; mox sese attollit in auras
> Ingrediturque solo et caput inter nubila condit."

But to this must be added that in our times she flies incomparably swifter, because the thousands of newspapers are her wings, and she is, in many cases, infinitely more obstinate, because the word is no longer evanescent breath, but fastened and fixed by types and print.

CXIV. Here, then, we find the great principle of a representative government, even in a democratic republic. It is not because the people are too numerous, and cannot any longer assemble in the market, as in the ancient republics, that representative governments are advisable, or have become necessary, merely by way of expediting business, but it is on the very same principle as a monarch, who interferes himself and does not leave matters to their proper authorities, even in absolute monarchies, is considered to act despotically, that the people, if they hold the supreme power, must not act themselves but through agents. He who has power, absolute and direct, abuses it; man's frailty is too great; man is not made for absolute power.

Everywhere it is now considered tyrannical—it was even so under so absolute a king as Louis XIV.—when a monarch sits in judgment himself; and it is tyranny, likewise, if the people do not judge through their courts. Frederic the Great, who was very anxious to remove a wind-mill close before the centre window of his favorite palace at Potsdam, could not induce the miller to sell it. The king, irritated, threatened the owner to force him to consent. "There is a supreme court in Berlin," answered the miller. The king was silent, and the mill stands to this day, an annoyance to the palace, but one of the best monuments which an absolute monarch ever erected to himself, as an ambassador wrote home from

Potsdam. It was stated of late that the present owner was very anxious to sell the mill, but the descendant of Frederic considers it too proud a monument of his forefather to allow it to be removed. I do not know that there is anything to which an American can point with greater pride than the decisions of his courts by which even legislative enactments have been declared unconstitutional, and which decisions are still in force. We shall see that the independence of the judiciary is one of the most important guarantees of civil liberty. England owes her greatness, in a high degree, to her independent judiciary, to the independence of the law. It is, therefore, a political error that some states have made the judges eligible for a few years only. It is, in fact, the majority—not even the people, the sovereign, which would be bad enough—taking the administration of justice into their own hands, on the ground that they shall administer it according to the sense of the people. There is tyranny, where the holder of power sits in judgment or influences it.

CXV. If it be true, as already mentioned, that a multitude, in many cases, are not so subject to sudden impulses as an individual, it is equally true that it is more difficult to disabuse a multitude than an individual. There are several other points which we have yet to consider in comparing monarchical and democratic absolutism. It has been frequently observed, after Lord Coke, that "corporations are without souls." Why is it so? Can the individuals forming them be imagined to be peculiarly bad? If so, it could not be a general remark; for corporations may consist of very different persons. The answer is simply this: because responsibility does not present itself so distinctly to one person in a multitude as to an insulated individual. Many an individual, indeed, will break down a house, nay, commit homicide, if he join a mob or become the member of a criminal association, who would shudder at taking the responsibility of these actions individually upon himself.[1]

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[1] To what a fearful degree of depravity men sink, what enormous crimes they

Another remark of high importance is to be made respecting democratic and monarchical absolutism. What is absolutism, the παμβασιλεία of Aristotle? The striking appearance, the form rather than the essential principle, have in this case, as so frequently, misled. Authors and politicians treat of absolutism as if there existed none but monarchic absolutism. It is not so in reality. A late writer, Mr. Dahlmann, defines absolute government thus: "When government has not only power, but all power, not only superioritas, but absolutum imperium, it is absolute government." This seems to be a circle; absolute government is absolutum imperium. No doubt it is, because it is the same expressed in two languages. I would say, wherever all power that can be obtained is undivided, unmodified, and *un-mediatised,* somewhere, whether apparently in an individual, or a body of men, or the whole people, which means in this case of course the majority, there is absolutism. The Athenian democracy sank into absolutism. I shall recur to this subject. Comparing democratic and monarchical absolutism, we shall find that the latter must needs rest its power somewhere without the monarch himself; for, as has been several times observed, the monarch has personally no more power than the meanest of the crowd. He must be supported by opinion without him; but democratic absolutism is power itself—it is a reality—fearfully sweeping power. It is real power, a torrent which nothing can stem. If an individual opposes monarchical absolutism, there is something heroic in it in the eyes of the people; if a man opposes democratic absolutism, he is at once considered a heretic, a traitor to the common weal. On the other hand, there is, indeed, a difference in democratic absolutism, namely, that at its height it necessarily leads to anarchy, and hence to a change; for anarchy is against the nature

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may be ready to commit as members of a society, under a common pledge, was lately exhibited in the trial of the Glasgow cotton-spinners, in Edinburgh, January, 1838. A society had been formed for the purpose of keeping up high wages, not disdaining atrocities and murder as a means to effect their object If a murder was to be committed, the lot decided who should commit it.

of man, and nothing remains long which contends against its own nature; while monarchical absolutism may last centuries, as in Asia. Democratic absolutism may, if not at its height, yet in an obnoxious degree, exist for a long time, in lesser communities.

CXVI. The untenable ground on which absolutism, of whatever kind, rests, can be shown also in this way. Absolute power in the state necessarily demands absolute obedience, for without obedience to government there is no government. What other meaning has authority than that in some way or other it can direct our actions? We cannot say, then, "here is absolute power, but the citizen need not obey if he choose not to do it." It would be a contradiction in itself; it would not be absolutism. Are the minority not bound to absolute obedience, though the majority have absolute power? These are contradictory terms. But, as I have had repeated occasion to observe, and as we shall farther see in the chapter on Obedience of the Laws, absolute obedience is not only immoral but impossible. Absolutism, therefore, in whatever shape, falls to the ground.

CXVII. Where power lodges, thither flattery flows. The prince—I here use this word not only for monarchs, but as the Venetians were in the habit of using it of their large body of nobles, who jointly had the supreme power, of the power-holders in general, whoever they may be—the prince loves flattery. Let us always beware of it. Every one loves flattery—we too, if we have power. Power, it will be remembered, has an inherent tendency to absorb, increase, extend; and interested men will always be found in abundance to help along this tendency, because it is pleasing to power to increase. Every prince, used in the above sense, finds his courtier. Republics are not freer from base courtiers than monarchs. The power-holder finds always ready instruments; and we ought early to learn how to guard against the flattering insinuations of those who live in the wake of power.

Power loves to be flattered, the same flatteries are ever repeated. The Turkish conquerors, the Solymans, Mustaphas, Mahmouds, loved to hear their fury compared to the ire of God and the lightnings of the heavens; and we have seen already how the revenge of the French people in the first revolution was complacently or cunningly compared to vast natural phenomena. Demagogues are but courtiers, though the court dress of the one may consist in the soiled handkerchief of a Marat, that of the other in silk and hair-powder. The king of France was told in 1827, "The royal absolute power exists by natural right. Every engagement against this right is void. Thus the prince is not obliged to keep his oath;"[1] and in America the people of a large state were lately urgently advised to break a solemn engagement, because they, the majority, had sovereign power. When Napoleon was at the summit of his power, the archbishop of Paris wrote to his bishops in a pastoral letter, "Servants of the altars, let us sanctify our words; let us hasten to surpass them by one word, in saying he [Napoleon] is the man of the right hand of God;"[2] and one of the presidents of the

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[1] A. R. Dédilon, Coup-d'œil sur les Constitutions et les Parties en France, Lyons, 1827.

[2] Goldsmith, Histoire secrète, page 130. Can the author have invented it? I only know it from that work. The bishop of Amiens says in his *mandement*, "The Almighty, having created Napoleon, rested from his labors." Fabre de l'Aude, president of the tribunal, said to Napoleon's mother, "The conception you have had, in carrying in your bosom the great Napoleon, was certainly nothing else than a divine inspiration." It is well for us fearlessly to see how far man is ever ready to err, as soon as opportunity offers. Shall we wonder that the Romans deified their emperors and worshipped their images? If power had such effect, so shortly after one of the bloodiest revolutions in the name of liberty, after the Christian religion had been professed for centuries, a religion which teaches that the mightiest emperor is but a sinful servant in the presence of God, should we be surprised that the Roman emperor was considered godlike by the subject, whose gods had abandoned him? (See chapters xii. and xiii. of Book II.)

It is not good, between individuals, to rake up past follies; it is noble not only to forgive but truly to forget. What is true of individuals holds likewise of nations. Not, therefore, to offend, I wish that some one would publish the most remarkable addresses made to Napoleon in and out of France: I wish it, that

United States (General Jackson) was told in a pamphlet that he was the actual representation and embodiment of the spirit of the American people, the personification of American democracy, that is, of the American nation.

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we may have them as a mirror of ourselves; for is it not our own time which committed these guilty follies? No man can improve unless he reflect at times seriously on his past life; so it is with nations, with mankind.

CHAPTER XI.

Political Atony one of the greatest Evils.—The Ancient Tyrannies.—Variety of Means to Check the Abuse of Power.—Can Power be controlled?—Who controls the controlling Power? — Constitutions. — Are Written Constitutions of any Value? — Constitutions are Indispensable. — Various Reasons why and Circumstances when Written Constitutions are desirable or necessary. — Division of Power; Legislative, Executive, and Judiciary. — Great Danger resulting from Confusion of these Branches, in Republics as much as in Monarchies.—Importance of the Separation of the Executive from the Legislature.—Vast Importance of an Independent Judiciary.—What does Independent Judiciary mean? — The farther political Civilization advances, the more independent does the Judiciary become.

CXVIII. The state requires power; without public power government cannot act, it cannot obtain its object, is unable to protect, and to enforce obedience to the laws; yet, on the other hand, all power has a tendency to increase. Without power, government, the laws themselves become despicable, political immorality and along with it all other immorality increases like a very cancer of society. This state of things may be called, borrowing a term from the healing art, atony, the necessary forerunner of a change of government either directly or by the intermediate state of anarchy, which I distinguish from the former by this, that atony is a state of general disregard of law from weakness, want of energy, a depression of the vital spirits of society; while by anarchy I would denote rather a chaotic stirring of the elements of society, open, forcible, avowed disregard of the laws, and of the principles of political society. Atony existed under the Merovingians, anarchy frequently in the feudal times. Atony exists in some parts of Turkey, anarchy in some parts of Spain.

If, on the other hand, power is permitted to go on increasing, it leads to despotism, by which is meant that state of the political society in which power alone decides, because it is power. Despotism may consist in the abuse of supreme power for purposes entirely at variance with or hostile to the objects of the state, in which case we call it, in modern times, tyranny. The ancient word *tyrannis* meant something different: it was usurpation of supreme power, not necessarily connected with cruelty or oppression. Pisistratus was called a wise tyrant. Or he that has the supreme power may use more than has been granted him; in other words, the legitimate limits of public power may be transgressed. In the latter case, though despotism exist, it may still use the public power for purposes of general utility. A nation on its guard never suffers it; but too frequently does tyranny creep in as popular despotism. (See Hermeneutics.) A process perhaps still more remarkable, and yet frequently exhibited in history, is that by which despotism steals into power by opposition to power. It is a very common mistake of the unwary to consider opposition to power at once as an indication of love of liberty; yet that the contrary can take place has, among many instances, sufficiently been proved by the attacks of the Jesuits or their adherents, with the ablest pens and the sharpest daggers, upon many Protestant governments.[1] Whatever our opinion of that remarkable society may be, I suppose we all agree that it was not civil liberty they strove for. Some of the most vehement speeches in favor of popular liberty on the floor of the French chamber of deputies are made, at present, by the adherents of elder Bourbons.

CXIX. A variety of expedients to retard the increase and regulate the use of power have been resorted to, some of which shall be considered here. The only way of avoiding effectually the evil is to prevent the generation of too much power, which, however, is not easy, for the simple reason that public power must exist, and if it exists, no matter where, it not only tends to increase by itself, but always finds both assistance and general respect. (See previous chapter on Power.)

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[1] Mariana, de Rege et Regis Institutione.—Balthazar Gérard, the assassin of William of Orange surnamed the Silent.

When the estates of France were assembled for the last time, in 1614, at the diet already mentioned, the bishops maintained that "the church is authorized to depose kings," and the nobility added, "the abuse of power is a legitimate ground for deposition." The third estate alone denounced these principles. And what was called abuse of power? There existed no greater in the eyes of the clergy and nobility than interference with their immunity from taxes. It was this and the possible leaning to Protestantism which was meant in this case.

Much has been said of the control of power. Who can control power? Of course, only he who has greater power. But the very object of all inquiry connected with this subject is to find out how that greatest, strongest power, no matter who wields it, who is, in fact, the *prince*, can be prevented from growing stronger than the interests of society require. Control of power would mean, therefore, self-control, which in this case would have no meaning. There may be one authority controlling another, for instance, a council may control a governor; there may likewise be a check on the supreme power in various ways, for instance, by public opinion; but, strictly speaking, the supreme power cannot be controlled as far as it exists, if there be any disposition to abuse it, which is especially the case in all periods of intense political interest. The question then is, how to prevent the existence of too great an amount of power.

CXX. One of the most common means resorted to are constitutions. Constitutions are the assemblage of those publicly acknowledged principles which are deemed fundamental to the government of a people. They refer either to the relation in which the citizen stands to the state at large, and, consequently, to government, or to the proper delineation of the various spheres of authority. They may be collected, written, and may have been pronounced at a certain date, such as the constitution of the United States; or the fundamental principles may be scattered in acknowledged usages and precedents, in various charters, privileges, bills of rights, laws, decisions of courts, agreements between contending or otherwise different parties, etc., such as the constitution of Great Britain is. We hear, therefore, frequently of the constitutions, not constitution, of a realm or principality. Thus, the ancient fundamental laws of some of the Belgian states before the war of independence of the Netherlands against Spain were exceedingly complicated, consisting as they did of a great variety of special grants and charters as well as their partial nullifications.[1]

Considering how much more beneficial it is if an institution has grown out of the healthy action of a people and developed itself along with the state of society, in other words, if an institution has its deep roots in the history of a nation, and, on the other hand, how lifeless the best-sounding written constitution remains if merely recorded in the archives, deprived of the necessary fibres through which it draws aliment from the actual life of the people, many persons have thought fit to deride the idea of written constitutions, and have declared them to be useless.[2] The great power of a precedent in England, and the hollowness of many declarations in the constitutions of some newly-emancipated nations, afforded them a strong contrast. There are writers on politics, indeed, who have condemned the whole idea of settled constitutions, asking whether a family father would believe that he could establish peace and harmony in his house by placarding at the door a series of regulations. This question rests on the unfortunate mistake of making no difference between the family and the state, treated of in a previous chapter. If the family grows very large, occupying several houses, and yet frequently assembles, it has even then in the family been found serviceable to settle certain regulations, and to adjust the difficulties that may occur, by a family council of the elder members. Rights not only may be, but ought to be, clearly pronounced.

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[1] For a classification of constitutions according to the various principles on which they are founded, as the subject has appeared to me, see the article "Constitution" in the Encyclopædia Americana, or the same, copied in the London Cyclopædia.

[2] * The English are constantly cited by the deriders of enacted constitutions; but it is forgotten that they, like any other people, enact "written" constitutions when necessary. They give real "written" constitutions to their colonies, Canada, New Zealand, etc. And they must do so. How else can they trace the frame of a new government?

CXXI. Those who dream of patriarchal, paternal, or whatever other relations of the kind, between the government and the governed, in a nation at all advanced, claiming absolute power on the ground of natural love, which ought to exist between the prince and the subject, as a matter of course object to constitutions. Ferdinand VII. of Spain was told that God had made him father of his country (his mother lived in continued adultery), and that it was rising against God to attempt to deprive him of unlimited power to do good. The abject flattery of many courtiers, judges, and most officers in high authority under Elizabeth and James was equally, sometimes still more, blasphemous.

It will appear from the whole view of the state, and the relations of the individual to it, which has been taken in this work, that constitutions are indispensable. They will invariably be established, or naturally grow up with the progress of political civilization. For they are nothing more than the distinct acknowledgment and clear expression of certain principles deemed fundamentally and essentially important to the well-being of society and the due protection of the citizen: the higher the degree of civilization, the greater their clearness. Civilization invariably tends towards the clearer development of principles, in politics, as well as in any other branch.

Written constitutions are desirable for the following reasons:

1. Where the political life of a people has been unpropitious for the foundation and growth of civil institutions, they are frequently the only possible starting-point, and, however slow, superficial, or deficient their action may be for a long time, still they form often the first available means to give civic

dignity and political consciousness to a people, as well as the beginning of distinct delineation of power. The French, indeed, have had many constitutions within the last fifty years, but similar phenomena will appear in other spheres. Talleyrand has sworn allegiance to a great many governments, Cranmer recanted about six times. Not, indeed, that I consider the latter as natural or excusable as the former. What had Talleyrand, or any Frenchman, to do, if the government of the country were changed?

2. Constitutions form, in times of political apathy, if not too great, a passage, a bridge, to pass over to better times. When civic consciousness is too weak, and patriotism too low, to repel encroachments by their own action, they are still sometimes sufficient to do so with the aid of a well-settled and clearly pronounced constitution.

3. It gives a strong feeling of right, and a powerful impulse of action, to have the written law clearly on one's side, and though power, if it comes to the last, will disregard the written law as well as the customary, yet it must come to the last before it dares to pass the Rubicon and to declare revolution. Many a time has power been checked by the appalling consciousness, Thou art going to break the fundamental law, the established law of thy land: into thy hands it was confided, and art thou becoming its assassin?[1]

4. It is our duty to define things as clearly as we possibly can in matters of a jural character. Confusion is the very opposite to right.

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[1] The French revolution of 1830 affords a remarkable instance. For years the government was afraid to take certain steps, because it knew it was against the written contract; and when it finally did propose a gross violation of the charter, or rather its abolition, the consciousness of the people that it was Prince Polignac and the whole court party and ministry, not themselves, who were breaking the great pact, gave them an energy and buoyant vigor without which the revolution could not have been effected, or, if it could, certainly not so rapidly. There was a great degree of civil alacrity in that event. Nor would this powerful change otherwise have been immediately acknowledged by nearly all Europe. The so-called legitimate governments knew very well who had been the aggressor.

CXXII. Constitutions, however, are valueless without public spirit; it is a serious error to believe that liberty can be made—can be decreed on parchment. This has been frequently used by absolutists as an argument against constitutions altogether. It is, however, no stronger an argument against them than against anything written in this world, whether it relate to religion, science, or law. There is not a written law which may not at times, and if the judges have the mind so to do, be stretched and distorted. When the spirit is gone, the letter is vapid. But it cannot be denied that the mere fact of distinctly pronouncing a certain principle in writing can do much. Nor do we forestall by written constitutions the necessary development of institutions; for as society is never stationary, so its political organization cannot be. I have dwelt on this latter, important subject in the Hermeneutics.

Inasmuch, then, as right and law depend in a great measure upon distinctness (this may be traced in the history of politics or law, in any tribe whatsoever), and as constitutions contribute to give this distinctness, as well as to lead the people gradually to greater clearness, and inasmuch as all confusion in politics has a necessary tendency to abuse and tyranny, and written constitutions define the spheres of action of the various branches of government, written constitutions are beneficial; and for those nations with whom the historical development has not been such as to lead them to a gradual and clearly acknowledged growth of fundamental political principles, for instance, the nations of Spanish origin in America, they are necessary. But they remain means, and we must beware of what has been called, in another part of the work, idolatry of the constitution; for it is the living nation, the life of society, which is the object of the state, and therefore of the constitution likewise.

CXXIII. A most effective means to prevent the natural expansion of power has been sought for in the division of power, which is, perhaps, not a very happy expression. The general, and certainly the most important, division is, as is well known, into the legislative, executive, and judiciary, though this is not the only one. In Brazil there are four branches. The first French constitutions speak of the administrative branch, as distinguished from the executive and legislative, and meaning the administration of the communes, etc.

It is not unfrequently believed that this idea of the division of power is due to Locke; more generally, Montesquieu is considered as the author who first settled it well. Aristotle, however (Pol., iv. 14–16), already makes this division, though I grant that only in modern times has this great principle fairly gone into operation.

That a clear division of these authorities must necessarily at least retard the increase of power, is evident. It is for the science of politics proper to show the natural foundation of this division, as well as the vast advantage flowing from it, and that it is a most powerful guarantee of civil liberty, especially if united with certain others; whatever opinion to the contrary may have become fashionable of late with a certain mystic school who ridicule the division of power, asking where we find it in nature, and whether the small states, in which no proper division exists, are not some of the happiest.

If the state is a jural institution, nothing can be more evident than that a clear division of the government functions must aid in protecting the members of the state. It is objected that the branches were divided in the first French revolution, and yet what tyranny! But the true answer is, they were not divided: on the contrary, the French so-called republic was always materially a concentrated government. Absolute power had passed from the crown to the assembly, the committee of public welfare, etc. Besides, there existed in other respects the greatest political confusion, which is always tyranny or soon leads to it. The people, that is, some of them, in Paris, resolved, demanded, dictated, besieged the legislative hall, or appeared in a threatening attitude at the bar of the assembly. That citizens have the right to petition is clear; that they may recommend certain citizens for certain places is equally clear, though it would be certainly a safe principle that only private recommendations ought to be given; but organized party meetings, recommending not one citizen but the entire *personnel* within a certain district at the change of an administration, certainly border very closely on political confusion, for it is not the people that make this selection. Even if the people of the whole district were unanimous, they would be but a very limited part of the whole. In reality, however, it is only the portion of the party in power within the district that assume this appointment. I call it appointment, for we well know that recommendations of such an organized sort go in their character much farther than simple petitions. Once more, confusion of branches, powers, and spheres of action is certain to lead to despotism. From the long accounts, contained in the papers, of a meeting held on March 7, 1837, in Philadelphia, in consequence of which a long list of candidates for various offices was recommended to the new President, it seems that it was of the kind mentioned. (See Niles's Weekly Register, Baltimore, March 18, 1837.)

We farther hear that, in despite of all so-called division of power, the executive will, if strong enough, seizes upon the others, and how can they resist, since the executive has the actual power—the army and navy, the money and the distribution of honor? In this objection, started very frequently by a writer who in his wishes belongs to the liberal portion of mankind, there are two mistakes:

1. Power does not only consist in the army, navy, and money; public opinion, which is gained by nothing so firmly as by a continued, even, and just administration of justice, and which has been frequently obtained by this alone, despite of the glaring corruption of the other branches, is power indeed. The army and navy must first be gained. Though the executive may have the supreme command over them, it does not rule them like machines.

2. It is wrong to argue that because, in times of extremity, one power may not be able to withstand another, therefore it is of no use. The division of power may prevent, and often

has prevented, this very extremity. It is the same here as with constitutions: are they never worth anything because, in times of extremity, he who has the army will tear the charter and dictate a new one if he thinks proper—that is, if the current of events and of ideas of his party make it advisable?

CXXIV. The separation of the executive from the legislative is highly important for the simple reasons that, if united, power will decree laws to increase power, and specific laws or decrees will be made in specific cases, according to convenience. Few things, however, are more necessary in a well-regulated community than that laws be general rules, and not fickle, not vulgar, as Bacon calls them in his History of Henry VII. Even unsuitable laws lose very frequently part of their evil tendency by being acknowledged and not changeable according to single cases. Nothing, however, is of so vital importance, of so momentous influence, as the independence of the judiciary, which has already been briefly touched upon. It is at once the noblest and most conciliatory principle in the state. It forms the choicest subject for the lover of civil history. By the independence of the judiciary is not meant separation from the rest of the state. The Turkish hakim or cadi is simply judge according to the written law, and always separate from the sabit, the executive officer, throughout the Turkish empire.[1] The hakim, however, is an arbitrary judge, as long as the interest of the pasha or sultan is not involved; and, on the other hand, the Turk is not protected against being put out of the pale of the law and dealt with according to entirely different interests or principles.

Vagueness in the use of terms has done its mischief in the discussions on this subject. If independence is claimed for the judiciary by some, others, not unfrequently, understand it as if arbitrary power in the judges were meant, while, on the contrary, we, the advocates of an independent judiciary, desire the individuals who may happen to be judges to be the very serfs of the law, but of the law alone—its organs, its proclaimers. And why? Because the law is the only rule given for the regulation of the actions of the citizens, or ought to be the only rule; because the law is the principle, and where this has not superior sway the accidental individuality of the person in authority must take its place, and there is an end of justice, of a strict government of law, of right—an abandonment of that principle on which we have ascertained the state to be truly and verily founded. The law, as I said, is a general rule, a principle; it remains something abstract, until brought home to practical life, to the cases of reality, and when brought home, those who do so, those who fix and link the generality of the law to the individual case, ought to be placed in the best possible manner which human wisdom can devise for the unbiassed application of the abstract rule to the practical instance. It is not only that true justice be done according to the merits of each case, which makes this bringing home of the law to every one so important; liberty in its deepest meaning, individual and national, depends greatly upon it. Lord Strafford, the lofty absolutist and penetrating statesman, mentions in one of his first despatches after his arrival in Ireland, to Cooke, that one of the greatest restraints on his predecessor, Lord Falkland, had been that he could not meddle in causes betwixt party and party, "which certainly did lessen his power extremely." Strafford adds, "yet how well this suits with monarchy, when they (the lawyers) monopolize all to be governed by their year-books, you in England have a costly experience; and I am sure his majesty's absolute power is not weaker in this kingdom, where hitherto the deputy and council-board have had a stroke with them." Strafford saw right. Destroy the bulwark of the law (and you do destroy it as soon as you destroy the independence of the judiciary), and the mighty sea of power will soon break in upon the people.

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[1] Von Hammer, Political Constitution and Administration of the Osmanic Empire, vol. ii. page 388, in the German.

By the independence of the judiciary is meant a judiciary that in the administration of justice cannot be influenced or overawed by any one, or anything, either by monarch, president, people, or populace, but which is strictly dependent upon the law and the spirit which made it, so that no citizen who ought to be judged by it can be rent from it, or be judged or punished without judgment by the same, or otherwise be injured in any way, by the protection of the laws being withheld from him.[1] The more deeply and earnestly we study history, the more sacred will appear this wonderful institution of an independent judiciary.

The English or American judge is not severed from, but closely united to, the state. He stands under the law, he moves within the law, his authority, yielded to him by the people, is only given to him as the minister and applier of the abstract law, the principle; he does not make the principle; he is a member of a vast church, the church of the law; he is not the arbitrary hakim, but a priest of justice, according to the rules of the people. (As to the necessity of interpretation in applying the law in many cases, see Hermeneutics.) He stands under the public press and public opinion, he does not settle the question of fact, and finally he owes his position as a judge to the gradual constitutional development of the whole nation.

CXXV. By means of an independent judiciary the citizen stands in each individual case, when the law comes home to him, under the constitutional protection of the court; by the independence of the judiciary alone, the American judge can assume that elevated function of declaring a law, when it finally strikes an individual, to be unconstitutional, a principle of which the ancients knew very little, we may say nothing, if compared as to its practical use with modern times. By the independence of the judiciary alone, an independent development of the law, according to the genius of the people and the essential wants of the times, becomes possible. Without it, the best intended and most liberally conceived institutions and political organisms will always become what a distinguished French jurist said in 1818 of the administration of justice and the constitution of his country: "We have contented ourselves to place a magnificent frontispiece before the ruins of despotism; a deceiving monument, whose aspect seduces, but which makes one freeze with horror when entered! Under liberal appearances, with pompous words of juries, public debates, judicial independence, individual liberty, we are slowly led to the abuse of all these things and the disregard of all rights: an iron rod is used with us instead of the staff of justice."[1]

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[1] * And so, in democracies, if the judiciary becomes dependent, the popular power will break in upon the minority. This is not because the power-holders are peculiarly wicked: it arises from a tendency of human nature as natural and sure as the laws observed by the chemist.

The necessary independence does not only mean independence of judges upon executive influence, it likewise means and demands the division of functions, already spoken of. For if the courts ought to be independent, and they are not strictly separate from legislative or administrative functions, they form bodies such as the ancient French parliaments were, which frequently, indeed, were of service to the people, considering the whole confused state of government, but which cannot be tolerated in a well-regulated state in which the various spheres of political action have been carefully defined. The courts in other states were frequently charged with the collection of taxes and other administrative business. This likewise is opposed to the idea of judicial independence, which, I repeat, is nothing but another term for the independence of the law, a means to insure the truth of the law, that is, that the law be law.

No human wisdom can devise any plan which has not its inconveniences. The independence of the judiciary requires that the impeachment of judges should not be made a trifling affair, dependent upon momentary impulses. This, questionless, leads in some cases to considerable inconveniences. But all the evils resulting from the independence of the judiciary are trifling indeed compared to the one great advantage—the government by law, and expulsion of the government by human individuality, which alone can be insured when the judiciary is independent. Means may be found to insure the one without compromising other interests. We all know that the infirmities of old age, in the natural course of things, impair the energies of the mind. There may then be good reason why a certain age should be fixed beyond which no judge should sit on the bench; though the age of sixty years, as it is adopted by the constitution of New York, as the maximum—the age when the Spartans considered their citizens only matured for their high council, the gerusia—appears certainly too limited. A statistical table of all the most eminent judges in England and America, with their ages, would incontrovertibly prove it. From a calculation I have made, though, I own, it has not been made on a scale so extensive as to be entirely satisfactory to myself, I should be inclined to say that seventy years would be a safer maximum age for the continuance of the judge in office. Still, no maximum age is infinitely better than appointments for a brief term, and, upon the whole, I believe that the fixing of a minimum age for a judge would be more important than that of a maximum. Bold action belongs to the younger age, from twenty-five to forty; wise counsel and unbiased calmness to the riper years. The papal hierarchy, it strikes me, has never had occasion to regret the advanced age of most popes, so far as the wisdom of their counsel is concerned.

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[1] Bérenger, De la Justice criminelle de France, Paris, 1818, p. 2—a work deserving decided attention.

An independent judiciary is likewise an institution which will regularly develop itself with the progress of political civilization. The patriarch is father, judge, priest, ruler—everything that implies authority. The king in early times holds his courts in person, nay, it is his highest attribute, and justly so for those early periods, because the monarch is mistaken for the state, and justice is its essential. David sat in the gate and dealt out justice, and St. Louis and Louis XII. administered justice under an oak-tree. The German emperors travelled from place to place to hold courts: "principes, qui jura per pagos reddunt." Now it is considered daring and high-handed interposition if the monarch interferes with the administration of justice in single cases, even in theoretically absolute monarchies. The history of the administration of justice in England shows the same progress. The king's personal administration became rarer and rarer, and George III. consummated one period in the history of this important subject by declaring, in the beginning of his reign, "that he looked upon the independence and uprightness of the judges as essential to the imperial administration of justice; as one of the best securities of the rights and liberties of his subjects; and as most conducive to the honor of the crown." As to the power of the British judge to declare a law unconstitutional, it is held by many that he does not possess it. (See Dwarris on Statutes, beginning of vol. ii.) Lord Holt, however, did it; and what is the judge to do if one law contends with another, and this other be, for instance, the Declaration of Rights? Can he possibly do anything else but declare the minor law to be second to the other, the fundamental one? (See Hermeneutics.)

CXXVI. The more precise division of the functions of government on the one hand, and its increasing wants on the other, have raised, in modern times, a peculiar check on public power to the highest practical importance, and made of it, at the same time, the reconciling principle in cases of conflict between the legislature and the monarchical executive. In former times, when the monarch was a rich nobleman, with vast domains appertaining to his house, he, frequently, could carry on the government, such as it was, without much pecuniary assistance from the people. If they gave it, however, it was always by way of grant. Powerful changes took place in the course of time; the wants of governments became greater in the same degree as they changed from feudal governments into national ones; domains were alienated, wars became vaster; in fine, monarchs could not carry on the government with their private or crown revenues; they were obliged to ask for supplies at the hands of those who had them. Some manly nations, most especially, however, the Dutch and the British, gradually did not only allow of no taxation without the consent of the tax-payer or his real or imagined representative, but they made frequently the grant of money, on their part, dependent upon grants of privileges, charters, or political freedom on the part of the receiver. At length the principle became distinctly acknowledged and solemnly settled with the English, that no taxation is lawful except it be granted by act of parliament. Other nations have neglected this. "The Castilian commons, by neglecting to make their money grants depend on correspondent concessions from the crown, relinquished that powerful check on its operations, so beneficially exerted in the British parliament, but in vain contended for even there, till a much later period than that now under consideration."[1]

As the British executive can, of course, do nothing without money, and as the money may be refused by the commons, the latter have obtained an effectual check upon the former. The same is the case in France, and all truly liberal states in Europe. Hence the immense importance which the word "supplies" has acquired within the last century. The commons have no right to change ministers whom the monarch appoints, but if the commons refuse supplies the monarch must change the ministry; otherwise government must stop, and a revolution would follow. And thus it ought to be: if there be disagreement, who else but the people shall decide virtually and effectually? Who else can finally decide? For a history of this check, one of the most interesting features of modern civil history, I must refer to the best English and French histories, and the history of the various European states in the middle ages. The second part of this work will offer an opportunity of discussing the subject when a citizen ought conscientiously to vote against supplies, with the intention of embarrassing the existing administration, so that a change may be produced.

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[1] Prescott, History of Ferdinand and Isabella, 2d ed., Boston, 1838, p. xlix Introduction.

CHAPTER XII.

Classification of Greek Constitutions by Aristotle.—Classification of Governments according to the Number of those who hold the Supreme Power.—Polity. Meaning in which it is used in the present Work.—Autarchic and Hamacratic Polities. —Autarchy, Hamarchy.—Absolutism. —Democratic Absolutism.—Different Operation in the Autarchy and Hamarchy.—Hamarchy materially republican in its Character.—The Polity of England is a Hamarchy.—The Polity of the United States likewise.—Hamacratic Character of the City of Rome.—Hamarchy rises with the Teutonic Race.—Anglican Hamarchy.

CXXVII. Aristotle says that the political constitutions in Greece had followed in this order: monarchy, aristocracy, oligarchy, tyrannis, democracy. The same great philosopher gives other divisions upon different principles, and we find mentioned in ancient times, among others, plutocracies, or states in which riches form the foundation of supreme power. Aristotle was the first, I believe, who made a distinction between the state constitution and the government. It is an important distinction, not even always properly kept in view by modern political writers, when they speak of the different "forms of government." Important as these forms are, according to the number of those who hold the supreme power, and although they constitute a prominent department of the science of politics, the office of which it is to inquire into their advantages and disadvantages under certain given circumstances, still the essence or principle is more important than the form. A republic, as to form, may be cruelly oppressive; a hereditary monarchy may protect the individual and leave a healthful action in most directions to the community. Aristocracies may be nothing more than a combination of despots far more oppressive than absolute monarchs, or the people may love the aristocracy they live under, as was the case with the subjects of Venice, when those of their number who lived on the continent, voluntarily, and at the peril of losing their all, defended and saved the republic in 1509, against the pope, the German emperor, and the kings of Spain and France, united by the league of Cambray. The noble Bayard, who fought against them, said that the subjects of Venice are faithful to their government to an unsurpassed degree, "for never have masters on earth been more beloved by their inferiors for the great justice which they always show them." There was a variety of governments around them, yet they seem to have had occasion to be satisfied even with an aristocracy, and a high-handed one too. It is often asserted, with what precise degree of truth I cannot say, that the aristocratic government of the canton of Bern is very popular.

CXXVIII. For our purpose it is necessary to direct, then, our attention to a different subject from that of the individual or body of individuals in whose hands the supreme power may rest. I shall consider chiefly of what character the power is, and in what mode government operates. Let us call the latter the polity of a state. I do not believe that I do violence to the English language if I use the term polity in this more definite meaning, nor do I deviate too much from the sense of the original word; for πολιτεία signifies, first, the relation of the free citizen to his state; and that this is dependent upon, and closely connected, in fact, in certain respects the same, with the organic operation of the state, will appear immediately. I divide, then, for our purpose, all states, according to their polity, into autarchies and hamarchies (from ἅμα, at the same time, jointly, co-operatingly, and ἄρχειν, to rule).

I call autarchy that state in which public power, whole and entire, unmitigated and unmodified, rests somewhere, be this in the hands of a monarch, or the people, or an aristocracy, it matters not for our division. Provided there be absolute power, or absolutism, a power which dictates and executes, which is direct and positive, we call the polity an autarchy. As the word autocracy has already its distinct meaning, namely, that of absolute monarchy, I was obliged to resort to another, which would comprehend the absolute monarchy as well as absolute democracy or aristocracy. The democratic autarchy stands, therefore, in the same relation to a democracy in general, as the absolute monarchy or autocracy stands to monarchy in general.

Hamarchy, on the other hand, is that polity which has an organism, an organic life, if I may say so, in which a thousand distinct parts have their independent action, yet are by the general organism united into one whole, into one living system. Autarchy acts by power and force; hamarchy acts and produces as organized life does: in the autarchy laws are made by the power; in the hamarchy they are rather generated: in the autarchy the law is absolute, after it has been made; in the hamarchy the law modifies itself in its application and operation. The political organism may prevent its action entirely, not by force, but simply because it cannot operate. In the autarchy the law is the positive will of power; in the hamarchy it is much more the expression of the whole after a thousand modifications. Hamacratic polities rest materially on mutuality; autarchy, on direct power. The principle of autarchy is sacrifice; the principle of hamarchy is compromise. Blackstone had in mind what I call hamarchy when he said, "every branch of our civil polity supports and is supported, regulates and is regulated, by the rest." It is not the "balance of power" which makes the hamarchy, but the generation of power. A hamarchy cannot be compared to a pyramid, or to concentric circles, or to a clock-work, but only to the living animal body, in which numerous systems act and produce independently in their way, and yet all functions unite in effecting that which is called life. If ever there was a republic of action, it is the animal body, and it is therefore the true picture of hamarchy; for from what has been stated it will be evident that hamarchy is materially republican, and though the form of government may be a monarchy, that is, though one individual may have nominally the supreme power, though the supreme power may be called the crown, though an individual may be designated by birth to fill the place on the throne that is to be filled, yet that which makes the polity of that state a hamarchy is republican in its character, as I believe it cannot be denied to be the case in England, nor do jealous royalists consider it in any other light. On the other hand, that government mechanism which is called significantly, if not classically, bureaucracy, is decidedly autarchic in its character.

It has been a great mistake to consider the law-making process only—which in fact means the law-pronouncing—of importance; for the process in which laws are generated, and, when pronounced, their mode of operation, are equally important. Autarchies oppress, if persevered in and applied to extensive territories, for the same reason that so-called universal monarchies have a ruinous effect.[1]

The dead weight of power oppresses, takes away from each minor activity its peculiar and characteristic function, and, though it may produce some specific astonishing effect, it saps the life; it may raise pyramids, but it cannot produce healthy, happy cottages.

CXXIX. Hamarchy, then, signifies something entirely different from the ancient synarchy, which merely denoted a government in which the people had a share together with the rulers proper.[1] Disjointedness, and absolute independence of the parts, in some respects, as the pashalics in Turkey, by no means constitute, as it will have appeared, hamarchy. A united organism is requisite. The polity of England, with her independent judiciary, independent courts, corporations, commons, lords, king, etc., is a hamarchy. The various United States, with their counties, judiciary, state legislatures, and congress, and their thousand semi-official meetings, form a hamarchy. Some of the states, without the American union, would have little of a hamacratic character; the federal government, without the state legislatures and sovereignties, would probably soon lose its hamacratic character.

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[1] Ancillon, Tableau des Révolutions du Système politique de l'Europe, part. i. tome i. p. 68: "A universal monarchy would be without doubt a great evil for the world, and the more an empire approaches to it, the more must the friend of mankind wish that it may stop in its progress. A universal monarchy would necessarily cause the oppression of the various nations, and the most crying abuse of power would be inseparable from the exercise of power; the force of circumstances would establish an Oriental despotism without limit, without measure, without refuge; it would prevent the development of nations, for emulation, rivalry, jealousy, and mutual fears are the means of perfection and the springs of activity for nations as well as individuals. At length it would bring down everything to the same measure; under the level of uniformity would disappear this happy variety of thoughts and sentiments, of talents and tastes, of habits and actions, which is at the same time effect and cause of the progress of life, and together with the national existence would vanish the physiognomy and the individuality of all nations." Mr. Ancillon was, at a later period, minister of foreign affairs to the king of Prussia.

CXXX. The independence of the parts can be carried much too far, as the activity of certain organs or systems in the body can be too intense, and disease must ensue. It is not the severance from the common system of life that constitutes the independence requisite to hamarchy. The Turks were before the gates of Vienna, diet after diet was held in Germany, but no united effort was made against the fearful enemy. Germans have fought against Germans, until their country has been drenched with the blood of her sons; yet not on account of her hamacratic character, but only on account of its being a loosely united confederacy. France, on the other hand, has for centuries systematically concentrated all power, and is now only in the process of passing from autarchy to hamarchy, restoring, as she does, political life to the various spheres out of Paris. That there are between the two extremes a multitude of shades, is clear. A part of a certain political system may be autarchic, and another have assumed more of a hamacratic character. It depends upon the mode of operation.

One of the most striking proofs of the hamacratic character of the English polity is this, that her gigantic capital, much vaster and richer than Paris, though of a country much smaller and less populous than France, has at no period so entirely absorbed the energy of the country, or so absolutely influenced the distant parts, be it in fashion, social intercourse, language, literature, taste, politics, or whatever else, as Paris has influenced and in fact guided France, even though the idea of fashion is so powerful in England. The word province, in France an expression which savors of disdain, has never acquired this meaning in England. A book is not disregarded in England because published in the "province," as it would be in France. Gaining or losing Paris has been gaining or losing France. It will not be always so in future.

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[1] [This word, so far as I can see, ought to denote *collegiality*, or joint rule of several administrative officers. Hamarchy is a compound unknown to the Greeks, who form almost no compounds with *ἅμα*.]

CXXXI. The Greeks had no clear perception of hamarchy. Government, with them, strongly inclined towards autarchy, democratic, aristocratic, oligarchic, or monarchic, as we shall see in the next chapter. Yet if we view ancient Greece as a whole, we shall find that, as such, she had a hamacratic character, and many of the unrivalled traits in her glorious civilization are owing to this very fact. The Roman polity had more of a hamacratic character, yet only in the city itself, and could never reach a decided character of this sort in the higher political spheres, on account of the whole view the ancients took of the state; though the Romans left a large sphere of free political action to the cities and provinces. The true germs of hamacratic polity must be sought for in the conquests of the Teutonic races, and the consequent feudal system, which indeed fluctuated long between barbarous anarchy or revolting lawlessness, and an auspicious hamarchy. When the cities with their charters, the provinces with their privileges, etc., etc., were added, the idea of independent action became clearer. In England, again, a sufficient union of the estates took place, not to permit anarchy; yet by happily uniting into two houses, and not one, or not remaining divided into three parts, one of the great foundations of her hamacratic polity was laid. The counties, etc., retained their proportionate independence, so the colonies, so almost everything connected with England, and thus she has produced what we may well call the peculiar Anglican hamarchy, which has transplanted political life into many distant regions, and from which the seeds of constitutional liberty have been carried over the continent of Europe. It is mainly the substantial principles of Anglican hamarchy for which continental Europe is now striving and struggling.

CHAPTER XIII.

Political Spirit of the Ancients.—The Ancients had not what we call Law of Nature.—Essential Difference between the View of the State taken by the Ancients and the Moderns.—Greek Meaning of Liberty: absolute Equality, even disavowing the Inequality of Talent and Virtue.—Protection of the Individual, first object of the Moderns; the Existence of the State, of the Ancients: hence high Importance of Judicial Forms with the Moderns.—He who has Supreme Power, be it One, Many, or All, must not sit in Judgment.—Greek Laws often very oppressive to the Individual.—The most private Affairs frequently interfered with.—Socrates' View of the State—Lavalette, Hugo Grotius, and Lord John Russell, on the other hand.—Ostracism.—Causes of the powerful Change in the View of the State.—Christianity.—Conquest of the Roman Empire by Teutonic Tribes.—Feudalism.—Increased Extent of States.—Printing.—Increased Wants of Government.—Taxation.—Rise of the Third Estate.—Increased Industry.—Discovery of America.

CXXXII. The civilization of the ancient Greeks and Romans was in many respects higher than that of the moderns; in others, the latter would have the advantage in the comparison; and among those things in which the most civilized modern nations excel the two gifted and noble ones of antiquity, or perhaps that subject in which we most signally and characteristically surpass them, is public law, or that branch of law which defines the relation of the individual to the state. With the ancients, all that an individual was, he was as a member of the state. The moderns, on the other hand, acknowledge the humanity in the individual, besides his civility or citizenship. We speak of individual, of primordial, rights; we consider the protection of the individual as one of the chief subjects of the whole science of politics. The *πολιτικῆ ἐπιστήμη*, or political science, of the ancients, does not occupy itself with the rights of the individual; the ancient science of politics is what we would term the art of government, that is, "the art of regulating the state, and the means of preserving and directing it."[1] The ancients start with the state, and deduce every relation of the individual to it from this first position; the moderns acknowledge that the state, however important and indispensable to mankind, however natural, and though of absolute necessity, still is but a means to obtain certain objects both for the individual, and society collectively, in which the individual is, by his nature, bound to live. The ancients have not that which the moderns understand by jus naturale, that is, the law which flows from the individual rights of man as man, and decides what the objects are which justice demands for every one and which the state is bound to promote and protect. On what supreme power rests, what the extent and limitation of supreme power ought to be, according to the fundamental idea of the state,—these questions have never occupied the ancient votaries of political science.

Aristotle,[2] Plato, Cicero, do not begin with this question. Their works are mainly occupied with the discussion of the question, Who shall govern? The safety of the state is their principal problem; the safety of the individual is one of our greatest. No ancient, therefore, doubted the extent of supreme power. If the people had it, no one ever hesitated in allowing absolute power over every one and everything. If it passed from the people to a few, or was usurped by one, they considered, in many cases, the acquisition of power unlawful, but never doubted its unlimited extent. Hence in Greece and Rome the apparently inconsistent, yet in reality perfectly natural, sudden transitions from entirely or partially popular governments to absolute monarchies, while with the modern European states, even in the most absolute monarchy, there exists a certain acknowledgment of a public law, of individual rights, of the idea that the state, after all, is for the protection of the individual, however ill conceived the means to obtain this object may be.

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[1] Heeren, Sketch of the Political History of Greece, translated, Oxford, 1834, p. 140.

[2] But even here we find that the gigantic mind of Aristotle had a glimmering of the truth far in advance of his times, when in his Politics, iii. 7, and Ethics, viii. 12, he finds the essential difference of states not in the number of rulers, but in the object of government, whether this be the welfare of the whole, in which monarchy, aristocracy, and polity are to be classed, or the interest of a few, in which he classes tyrannis, oligarchy, and democracy. Democracy he distinguishes from polity by this, that in the latter the most numerous class of citizens, the indigent, vote according to their separate interest, while in the absolute democracy, as we would call it now, the great number must always outvote the smaller number, and are led by a few. The moderns know a third — the representative principle.

The idea that the Roman people gave to themselves, or had a right to give to themselves, their emperors, was never abandoned entirely, though the soldiery arrogated their election. "We may safely infer from this that the emperors themselves recognized that the Roman people had not deprived themselves of the right to give themselves their masters." (Barbeyrac, note on Grot., p. 441.) Or if the reader does not agree with me on this point, which cannot be discussed here, it is manifest, at least, that no legitimacy either by descent or divine right, or founded on a constitution, was acknowledged. Yet the moment that the emperor was established, no one doubted his right to absolute supreme power, with whatever violence it was used.

CXXXIII. Liberty, with the ancients, consisted materially in the degree of participation in government, "where all are in turn the ruled and the rulers." Liberty, with the moderns, consists less in the forms of authority, which are with them but means to obtain the protection of the individual and the undisturbed action of society in its minor and larger circles. *'Ελευθερία*, indeed, signifies, with the Greek political writers, equality, that is, absolute equality, and *ἰσότης*, equality, as well as *ἐλευθερία*, is a term actually used for democracy. (Plato, Gorg., 39.) It is, therefore, perfectly consistent that the ancients (see Arist., Pol.) aim at perfect liberty in perfect equality, not even allowing for the difference in talent and virtue; so that they give the *πάλος*, the lot, as the true characteristic of democracy. This is striking, and has a deep meaning.

They were naturally and consistently led to the lot; in seeking liberty, that is, the highest enjoyment and manifestation of human reason and will, they were led to their annihilation, to the lot, that is, chance. Many magistrates, the senate of five hundred, and others were chosen at Athens by lot.[1] Hence again the phenomenon, that many ancient philosophers discussing the question of the best government make the state absorb the individual (Plato, in his Republic), and take the Lacedæmonian constitution of Lycurgus as a model. The moderns, on the other hand, unite the two objects of discussion, liberty and the safety of the state, and can do so. The great problem with them is, how the utmost possible protection of the individual, as an entire man, can be best united with the demands which society makes as such. The difficulty of politics and ruling, therefore, has infinitely increased, and is daily increasing; because the individual makes greater claims with each advance in civilization. Hermodorus in Ephesus was banished because he was the best. The decree of the people was, *ἡμέων μηδὲ εἷς ὀνήιστὸς ἔστω, ἐι δέ τις τοιοῦτος, ἄλλῃ τε καὶ μετ' ἄλλων.*[2]

The ancients do not discuss the rights of the individual: as opposed to the state, he has none. Hence the immense importance which the judiciary has acquired in modern times, the certainty of the law as a general rule, and the minute attention paid to the fixed forms of its administration, so that it is considered of the highest consequence that no one shall be judged but by that tribunal before which he belongs by law, or his natural judges, a principle held so important that it is inserted in the modern constitutions. The court of cassation (or quashing), the highest court of France, has nothing to do but to try whether in a trial any illegality of judicial form or error of law has taken place; and in the French charter, as amended in 1830, we read, "No one can be deprived of his natural judges." . . . "There cannot, in consequence, be extraordinary committees and tribunals created, under whatever title or denomination this might be." French Charter, 53, 54.[1]

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[1] I must refer here to Aristotle's Politics in general. Herodotus, 3, 80, gives the essential character of ancient democracy. It is isonomy and lot. See also Herodotus, 5, 78, where democracy is commended. On isonomy, or equal right to power and liberty of speech free to all, see W. Wachsmuth, Hellenic Archæology (in German), vol. i. part ii. page 22; on democracy in general, ibid., p. 18 et seq. Of great importance is likewise Boeckh, Economy of Athens, translated from the German—a standard book.

[A few years before Dionysius the Elder became tyrant of Syracuse, the lot came in with the new laws and constitution of Diocles. Diod., viii. 33, 34. Dionysius, according to Plut. Apophth. reg. p. 175 E, drew the lot to address the people, and then was *chosen* general, which paved the way for his tyranny.]

[2] [This saying—not decree—is recorded in Diog. Laert., ix. 2, and is thus translated by Cicero, Tusc. Disp., v. 36, 105: "Nemo de nobis unus excellat; sin quis extiterit, alio loco, et apud alios sit." The philosopher Heraclitus, the friend of this best citizen, said that the grown-up citizens ought all to be killed for banishing him.]

Indeed, what are all modern constitutions but fundamental laws, by which the supreme power is to be restricted to proper limits, and the individual rights of the citizen to be secured? The judicial formalities of the Greeks, however, were uncertain. The people stepped in, according to their pleasure, as in monarchical despotisms the despot does. When the Athenians proceeded against the commanders after the battle at Arginusæ, the whole legal procedure was changed for this special case. According to the law of Canonus, the case of every commander should have been voted upon separately; but in this trial the people voted on all commanders jointly. Some citizens remarked this discrepancy, but the crowd exclaimed, "It would be monstrous if the people could not do what they like,"[2]—precisely what Louis XIV. would have exclaimed, had he chosen to judge a case in his palace, and the parliament of Paris should have attempted to interfere. It was impossible, according to the course of political civilization, that antiquity should have elevated itself to the great idea of an independent judiciary; nor have the moderns discovered the truth by abstract reasoning or natural law. We have been led to it by the peculiar political development of the European race through the lawless times of feudalism, and the elevated views of the moral character of man, raised by Christianity and the progress of civilization, closely connected with increased population. Having, however, arrived at the idea, we cannot sufficiently value it; and every flatterer of the crowd, when he wishes to persuade them that the people, being the masters, can do what they like, ought fearfully to pause and well weigh this mighty subject. And after having reached the idea it took a long time to make it a reality by defenses of it against the means which royal power had of controlling the judges. None on earth, neither people nor monarch, neither all, many, few, or one, have a right to do what they like. None, not even unanimous millions, have a right to do what is unjust. Absolute power is not for frail mortal man: it ruins those subjected to it, and blasts the hand that wields it.

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[1] The charter of 1814, promulgated by Louis XVIII. when he ascended the throne, read thus: "In consequence, there cannot be created extraordinary committees and tribunals. The *jurisdictions prevôtales* (extraordinary courts with military officers among the judges: see articles *Prévôt*, *Cours Prévôtales*, in vol. x. of the Encyclopædia Americana), if their re-establishment should be found necessary, are not comprised under this denomination."

[2] Xenophon, Grec. Hist., i. 7, 12. In the speech against Neæra, ascribed to Demosthenes, is a like remark, that the people may decree against the law

CXXXIV. The idea that the state is everything and the individual has its value only inasmuch as he is a member of the state, had of course a very powerful influence upon the security of private property and upon taxation. Everything could be demanded for the state, and special taxation, like that peculiar regulation in Athens, called in Greek λειτουργία, by which single citizens were burdened with certain services or expenses, were but a natural consequence. It was not repulsive to the feeling of justice in an Athenian to see a rich individual charged according to law with the expensive burden of defraying all the expenses of the choruses in the dramatic performances called choregia, or the getting up of a public dinner of a tribe. (Boeckh, iii. 21, vol. i.)

We may be somewhat reconciled to these special taxations when we consider that nearly all festivals and amusements of the Greeks had a religious character; that, according to their views, the tutelary deity would have been offended at the omission of these festivals, and, consequently, their due celebration was of public importance.[1] Still, the special charges must be explained on the ground I have mentioned.

The ancient political philosophers do not omit to treat of education; on the contrary, they pay much attention to it, but never in any other light than that of the use to be derived for the state—its preservation. They know of no other object of education than the political one, to bring up individuals fit to perpetuate the state; it is their sole object. The highest object of education with the moderns is, as all sound works of education state, the development of man, the cultivation of all his powers, and suppression of evil in him, the development of all that in each individual which he was created capable of being; in short, the very highest object of education is the fullest and purest possible development of the individuality imprinted by the Maker upon each separate human being; to bring forth the genuine individual man in his shape and character, removing all foreign, accidental, obnoxious adhesion, and thus, by raising true men, to raise true citizens for the state and prepare man for his final destiny.

There was no subject with which the state could not interfere in ancient times; for the principle was, where the people are the rulers and the ruled, they cannot harm themselves—a principle not so wrong in ancient times as it is, as has been previously shown, in modern. The ancient politician saw chiefly but the state; the people, therefore, necessarily appeared to him as one mass. In modern times, when individual liberty is so important, we care little about the question whether the people can harm themselves, while we know that the majority may harm the minority; the number, the individual.

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[1] "We need not therefore be astonished when we hear that a city could be very seriously embarrassed by the want of sufficient means to celebrate its festivals with due solemnity." Heeren, Sketch of Political History of Ancient Greece, p. 172.

In Crete all the youths who were annually dismissed out of an Agele (division of youth) were required to be married at the same time (Strabo, x. 4, 20); to remain unmarried was punished in many Greek states. (Pollux, iii. 48; viii. 40.) Marriages with women not of sufficient size were punished in Sparta. Thus, king Archidamus is said to have been fined for having taken too small a wife. (Plutarch, in Agesilaus, c. 2.) What subject was not restricted by law in Sparta? We read that one who preferred a rich to an honest but poor lover, and one who did not love at all, were punished. (Ælian, iii., Var. Hist., 10.) A youth in Sparta is said to have been punished for rapaciousness because he bought land for too low a price. (Ælian, u. s., xiv. 44.) Common trades were not permitted to the Lacedæmonian citizen (Xenophon, Laced. State, vii. 2), which was the case in many other states. A story (Plut., Inst. Lacon., No. 17) makes Terpander in the seventh century B.C. to have had his lyre snatched from him by an ephorus at Sparta, who cut one of the eight strings off, and long after, another ephorus (about 400 years B.C.) cut off four of the eleven strings from the lyre of the great musician Timotheus, as tending to corrupt music and morals. Pausanias saw the lyre hanging in the Skias at Sparta. The same story is told of Phrynis. (See Plut., Agis., 101; Pausanias, iii. 12, 8; with many other instances.[1])

I do not assert that laws equally interfering with private concerns have not been passed in modern times; we have only to look at some enacted during the French revolution. Catharine of Russia did not hesitate to interfere with private rights. There are certain laws in Prussia and Austria founded entirely on the idea that the state must direct all things, that nothing of importance can take care of itself. According to the newspapers, a late Prussian decree prohibits the quoting of the price of foreign stocks, to prevent individuals being seduced into ruinous stock-jobbing. But we do not lay it down as a rule that the state is everything, and therefore has a natural right to guide and claim everything; at any rate, this is not done by those modern nations who are politically farthest advanced, and where this interference takes place it is done under the pretence of, or really for the benefit of, the individual. Compare the freest modern states with the freest ancient.

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[1] I refer to F. W. Tittmann, Exhibition of the Political Constitutions of Greece, in German, Leipsic, 1822, especially to the first book. The reader will find there a careful and judicious compilation of the most important passages.

It was, therefore, consistent with the ancient views of the state, that Socrates declined availing himself of the opportunity of escape offered by his faithful disciples. He answered, that the state had ordered his death, and, though wrongly, he had no right to withdraw himself from the law. It would be different had he put it on the ground that, in order to prepare his flight, his friends had been obliged to bribe the jailer, and that he would not participate in an act wrong in itself. He does not seem to have put it on this ground of ethical delicacy, but simply on a politico-ethical ground. According to our views, all mutuality ceases as soon as the law demands my innocent life, which it is one of its main objects to protect. I cannot be held voluntarily to obey that law which seeks my innocent life and ceases to perform the first of all objects of the state, without which the others cannot be imagined. A martyr may prefer to die, in order to awaken a slumbering people, or for some extra-political reason; but no one will pretend to say that a Socrates, in our times, would do wrong to escape. On the contrary, without any other consideration, he would do wrong, in my opinion, not to escape, however deeply touching to every true heart the calm refusal of the spotless and noble Socrates must ever be.

Can General Lavalette, according to the strictest code of morals, be reproached for having accepted his deliverance at the hands of his devoted, intrepid, and ingenious wife? (See his Memoirs.) Did Hugo Grotius fail in the strictest duty of a citizen because he allowed himself to be carried in an old box, by his wife and maid-servant, out of the prison where Maurice unjustly kept him? For whatever reasons Lord William Russell declined to exchange clothes with Lord Cavendish and to flee from prison, does not every one see at once how entirely out of place, with him, a tender regard to supple or perjured menials, and a king without faith or honor, would have been? Or, when Catholics and Protestants burnt one another, should not an imprisoned man, destined for the rack and the stake, have seized upon an opportunity of escape? Declining it merely on the ground of its unlawfulness would either be absurd, or a seeking of martyrdom very doubtful in its moral character;[1] for the destined victim himself ought to prevent, as much as in him lies, the committing of such crimes in others, because the more crimes of the sort have been committed, the more difficult it becomes to return to a state of peace. There are many cases, even in common, even domestic life, in which there is greater love shown in avoiding than even in meekly suffering, which not unfrequently is allied with lurking vanity.

Suppose false witnesses have brought a sentence of death upon me; ought I not, in mercy to my judges, to escape if I can? Would they not thank me for it, if, at a later period, I could prove my innocence? And what else is persecuting fanaticism but a false witness? Let me not be misunderstood. I am not obliged at all events to escape. If death is offered me thus, I may say, "So be it; I am ready to seal my cause with my blood." I simply speak of the jural point in the matter, and I would add that abject slavishness is a hideous counterfeit of manly loyalty. When Stubbe, a Puritan lawyer, for having written a pamphlet against the intended marriage of Queen Elizabeth, had his right hand cut off, he waved his hat with his left, and exclaimed, "Long live the queen Elizabeth!" and with it wrote, afterwards, against the Catholics for Lord Burleigh. He was either a man of most uncommon elevation of mind, or the very meanest of slaves.

[[1] Comp. Matt. x. 23.]

CXXXV. Connected with the ancient view of the state and of liberty were the institutions of ostracism at Athens, Argos, Megara, and Miletus, and of petalism at Syracuse. It has been seen that liberty and equality, equality and equal participation in government, were, with the ancients, but different terms for nearly or entirely the same things. They soon felt that not only ambition and actual political power were dangerous to this equality, which, according to them, was the essence of liberty, but also distinction on other accounts, for instance, suavity, virtue, services performed for the state. Have we not instances in modern times of men becoming highly dangerous on account of their popularity, however well deserving they may have been originally? Yet, with our representative system and more extensive states, the danger is not quite so great, though great it always will remain in republics. "It was not considered unjust to take from any one, by a temporary banishment from the city, if it was feared that he might become dangerous to this freedom, the power of doing injury." (Heeren, Pol. Hist. of Greece, p. 155.) Niebuhr, in his History of Rome, vol. ii. p. 454, Amer. edit., speaking of Manlius, says, "Thus, whether guilty or innocent, he became an extremely dangerous person, through a misfortune for which there was no cure; and matters could not fail to grow worse and worse. This knot might have been solved by ostracism."

Ostracism was materially a political, and not a judicial, institution. The exostracized citizen was not punished, his fortune not confiscated, as was the effect of actual sentences of banishment for crimes; no dishonor was attached to it. On the contrary, when it became dishonorable, because a despicable man of the name of Hyperbolus had been banished by this process, the institution fell into disrepute and was considered as disgraced. Banishment by ostracism was no sentence, because there was no accusation; and, what is more remarkable, at stated periods, it is said at the sixth prytany of the year, the people were called to vote whether there was occasion to resort to ostracism. (Comp. K. F. Hermann, Gr.

Staatsalterth., § 130.) There was no necessary ill feeling towards the banished, connected with ostracism. "Nothing," says Heeren (ut supra, p. 155), "can be more jealous than the love of liberty; and, unfortunately for mankind, experience shows too clearly that it has reason to be so."[1]

The excessive punishments of the Greeks ought likewise to be mentioned here. It is a principle in modern political law that each punishment ought to have its justification in its proportion to the offence. The absolute despot sees nothing in the crime so punishable as the offence, or the daring against his law. So did the Greeks know little of any gradation of punishment to be applied to an offender against the state. Their fines were excessive: confiscation of all property was frequent, and in many cases connected with death. (Boeckh, Economy of Athens, Book iii. 14, and iii. 12.) He who should propose to execute the claims upon Salamis against Megara, at the time of Solon (Plutarch, in Solon, c. 8; Justin, ii. 7, and others), or should use the money destined for the poor with regard to the theatre (θεωρικά) for any other purpose (Libanius, arg. to Demosthenes, Olynth. i.), or who should accept of a public office while he owed money to the people (Demosth. adv. Leptines, § 156; adv. Midias, § 182), or, if an archon, was intoxicated (according to the laws of Solon, in Diog. Laert., i. 57)—for all these offences, and many more, the punishment was death. Draco punished even indolence with death. I am not disposed to ascribe this severity simply to the fact that democracy was absolute according to the ancients; for all early punishments are severe, because imprisonment is little known, and it lasts a long time before men find out that the severity of punishment does not constitute its efficaciousness. Still, no one will deny that these excessive punishments show likewise the absence of a proper acknowledgment of rights in the individual.

CXXXVI. So powerful and thorough, so overwhelming and essential a change in some of the most elementary views of the civilized nations has been produced by various causes of vast extent, of which I shall be able to touch briefly on a few only.

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[1] Tittmann, ut supra, p. 341, et seq., gives a proper representation of this peculiar institution.

Among the most active causes which wrought this great change in European civilization, I conceive to be these:

Christianity.

The conquest of the Roman empire by fresh tribes, which came from the north, and, being rude, with a keen feeling of individual independence and endowed with high capabilities, caused the system of feudalism to spring up.

The increased extent of states and denseness of population, not only of cities, but of the countries at large.

Printing.

The increased wants of governments, the consequent increased value of money for them, the consequent increased importance of the tax-payer, the consequent increased importance of industry. Union of science and industry.

Discovery of America.

CXXXVII. 1. *Christianity.* It may sound surprising that that religion, the founder of which did not only declare that his kingdom was not of this world, but who, it seems, carefully avoided any discussion which might lead to political subjects,[1] should nevertheless have had so powerful an effect on politics as I ascribe to it. It is, however, the very action of Christ's declaration that his kingdom is not of this world, upon so peculiar a state of things as that which existed when his religion began to be preached over Europe, that produced this political change.

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[1] Christ answered the Pharisees, who had asked, "Is it lawful to give tribute unto Cæsar, or not?" perceiving "their wickedness," in seeking to involve him in political discussions on so delicate a subject in the then state of Palestine, 'Show me the tribute-money," and when the Pharisees said, being asked by him, that the image and superscription were Cæsar's, he replied, "Render therefore unto Cæsar the things which are Cæsar's, and unto God the things that are God's." (Matthew xxii. 18–21.) It seems to me evident that Christ cannot have meant to give in this case a rule in politics; for the image on the coin cannot be brought into any connection with the question whether it be lawful to

Around the Mediterranean we find in antiquity numberless small states, which have each a peculiar character, not only in a political point of view, but also in regard to religion. "The ideas of God and divine things had, we might say, *localized* themselves."[1] The religions of all these separate states or autonomies are intimately interwoven with their political law. Relationship of tribes formed the only and yet a loose tie between some of them. Rome rose, and steadily conquered state after state. Their political law was concentrated in Rome, and the various religions necessarily followed thither. But what were these religions when rent from their native soil? The worship of Isis had a meaning in Egypt; powers of nature, as they manifested themselves in that country, were revered and worshipped in her; in Rome it became an idolatry without any other sense than that it was a sign and evidence of the victorious eagle of the city. All the various mythologies brought together into one place could not

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pay taxes, except in this way, that the image proves that the person represented has the supreme power, and that therefore it will be wise to pay taxes, unless there is sufficient hope for successful resistance. Otherwise Christ would at once have established by his answer that all conquest is right, all resistance of a noble people to a conqueror wrong; for surely there was no other connection between the Roman Cæsar and Palestine than that of mere conquest. The Roman government disagreed with the theocratic fundamental law of Moses. The Jews, under Titus, showed that they had not calculated their resources, by which they brought infinite misery upon themselves; yet no one will be bold enough to say that, waiving the question of expediency, of sufficiency of means, the Jews had no right to attempt throwing off the Roman yoke.

[1] Book I of vol. ii. of Ranke's Princes and People of Southern Europe in the Sixteenth and Seventeenth Centuries, chiefly from unprinted Reports of Legations, Berlin, 1834. This second and a third volume have also the separate title, "The Roman Popes, their Church and State in the Sixteenth and Seventeenth Centuries." The French translation has the title "La Papauté." Neander, History of the Christian Church, Amer. trans. by Torrey.

but contend with and neutralize one another. Rome destroyed the various nationalities, and men began to suspect a communion with each other, that there is something in all men which might be a bond, beyond the mere relation of the citizen to his state. It was the first dawn of a most glorious truth.

At this moment appeared Jesus; a religion was preached which gave to monotheism, until then a national worship of the Hebrews, a cosmopolitic character. All men can become Christians, all are called upon to become such. The founder of the Christian faith had abstained not only from touching upon politics in general, but from any question which does not directly belong to religion and morality or is not most closely connected with either. Neither science, nor industry, nor law, whether civil or penal, nor the principles which govern the physical well-being of nations, the exchange of their labor, in a word, what we treat of in political economy, nor nature, literature, poetry, nor metaphysics proper, except in as far as it is connected with questions of religion, for instance the immortality of the soul, are ever touched by him. Not even the soothing and elevating admiration of God's creation is made a subject of his instruction, perhaps as too much depending upon climate, national development, and degree of civilization. Nothing in what he has taught or ordained can be an obstacle in the way of his religion being received at once by all nations and all classes of society; the lowliest slave may embrace it as well as the mightiest magistrate. And what does this religion teach? Among other things, that a benignant deity, ready to forgive the sincere penitent, is not to be propitiated by any outward or inward things, except by purity of soul, and that there is a life beyond this present one, an infinite life beyond this finite one, the peculiar character of which will greatly depend upon the purity or impurity of the life this side the grave; and not upon birth, not upon fortune, not upon caste or color. A spiritual God, not attached to any nationality, is preached to all men, whatever language they may speak, whatever country they inhabit—a father to all men.

The moral value of the individual became thus immeasurably raised. Every one is declared to have a moral being of his own, with high responsibilities, to answer for hereafter; no one will find favor before the high judge on the ground that he was born in a certain country or descended of a certain class. A God has been proclaimed to be the God of all men, high or low, distant or near; a God before whom all are equal. The state could no longer remain all and everything; a territory had been discovered beyond the state; man is something, and something important, besides his being a citizen; he is a man for himself, a moral agent, called upon by the Almighty himself, not any longer imagined as having any national attribute, to fulfil his duties and to receive his reward according to his deeds. The farther this religion extends, the more its preachers insist that no language, no political limits are boundaries for Christians, as members of their one great church. Tertullian says, "At enim nobis ab omni gloriæ et dignitatis ardore frigentibus nulla est necessitas cœtus, nec ulla magis res aliena, quam publica. Unam omnium rempublicam agnoscimus, mundum." (Apol., cap. xxxviii.) "Nothing is farther from us than the state. We acknowledge but one state—the world."

The power of all states had concentrated in Rome; the many national religions had neutralized each other. There was but one power which seemed real and independent—the emperor. Temples were erected in honor of him; sacrifices were brought to him; oaths were taken by his name; his statues offered an asylum. The worship of the emperor was often the most zealous and fervent. (Tertull., Apol., cap. xxviii.) Here then was no national or state religion, but power and religion were actually one. It is a transitory state of things which fills with the deepest awe. In sacrificing to the imperator, man lowered himself to the deepest slavery. The national religious fervor was extinguished, the inspiring poetry of religion was destroyed; it was deification of power, indeed; the apotheosis of might. But now Christianity rose; it called upon men as moral beings, to the lowest of whom its founder lowered himself; it appeared "like a morning of a new day." The apsis of the basilica contained an Augusteum; the statues of the Cæsars were divinely worshipped; but now they were exchanged for pictures of Christ and his apostles.[1] It is not my task to depict here how that religion, which had fled to the catacombs, stepped finally forth victorious into the open day, until we see the monogram of Christ in the labarum of Constantine. Wherever it spread, and however soon the peaceful message of Christ was turned into a blood-stained law of persecution, yet the individual moral value of man was acknowledged, and something beyond the state, higher than its supreme power, was preached, so that the state became the means to obtain something still higher. What a difference, when we find the greatest philosopher of antiquity proving, as he thinks he does, that the barbarians (foreigners) are made to obey, to be the slaves of, the gifted Greek race, and, on the other hand, Pope Gregory the Great, in the sixth century, referring to the natural law of original liberty, ordering the manumission of bondsmen, and a priest recommending to Louis the Pious the giving of alms and manumission of bondsmen as works of equal merit.[2]

CXXXVIII. 2. *Conquest of the Roman empire.* When Christianity had begun somewhat to reform the old or Latin world, if not to any great extent the deep degeneracy of morals, yet the views of man, it soon extended to those tribes who were destined to uproot decaying Rome. They came fresh from the north, with the ardor of youthful tribes, a fulness of glowing souls, with no settled civilization among them, hence free and ready to embrace Christianity with the energy of young nations and a religious fervor peculiar to the northern tribes. They were of Teutonic origin, and had that national singleness of heart by which most Teutonic tribes have ever distinguished themselves from the Latin population of Europe, however rude we know them to have been at their first appearance, when yet in a state of great barbarity.

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[1] E. Q. Visconti, Museo Pio-Clementino VII., p. 100, edit. of 1807. I take this quotation from Mr. Ranke's work mentioned above in note 1, p. 371. (History of the Popes, i. 28, Amer. edit.)

[2] Smaragdi Abbatis Epist. ad Ludov. Pium apud d'Achery, Spicileg., t. v. p. 51.

The northern nations are less excitable than the southern race, hence they cannot so easily be moved in masses. With the Greeks, so excitable by nature, everything became an impetus to the mass; the northern man, calmer, more phlegmatic, duller, weighs things more individually, learns to consider the state in relation to himself, and is led more easily to reflect on individual interests—on rights. The conquest and consequent distribution of the Roman provinces among the conquerors produced feudalism, out of which lawlessness, but also the insisting upon individual independence, and, later, individual right, the feeling of individual honor and importance, grew up, a direction of the mind which was by no means changed when the cities and other communities entered into that chequered and curious system.

CXXXIX. 3. *Enlargement of states; denseness of population.* It has been stated already that the politics of the ancients were essentially city politics. As the word is derived from πόλις, so actually did city and state mean with them the same. (Respecting the meaning of πόλις, and the difference between it and ἔθνος, state and nation, see Aristot., Polit., p. 235, ed. Casaub. See likewise this work, book ii. sect. xxix.) The same is true in regard to civitas. They did not know other states of freemen. Persia was nothing but a number of countries conquered and held together by the victorious tribe of the Persians. They formed a ruling nobility. Where, however, the people can conveniently meet, where the ruling community can assemble at any moment, it is much more natural that the majority should enjoy unlimited power, than in states where the people cannot be seen at once, where questions must be treated more abstractedly, and where representing agents, speaking for large numbers, must be heard. Besides, no proper debating is possible where the people themselves meet; the questions must be prepared beforehand by some authority, so that the vote can be ay or no. It was so in a considerable degree in Greece; it is so in the democratic cantons of Switzerland, for instance, Uri, Glarus, Schwyz.[1] Yet debating, however abused by many, is one of the chief means to obtain an acknowledgment of individual rights, and to prevent measures injurious to them. Such measures have ever been passed in haste by the suspension of rules, if they have been passed in deliberative assemblies.

So long as all citizens knew each other personally, the abstract development of the just, separate from the good, was as difficult as in the family.

Increased population has likewise contributed much, both by the necessity of imagining the people in the abstract, and by bringing individuals, personally unknown to one another, into contact. Increased population alone had a most decided effect upon the administration of justice; for it necessarily developed the institution of the advocate, without which justice has flourished nowhere. See Feuerbach's interesting remarks on the subject in his Considerations on Public and Oral Administration of Justice, Giessen, 1821. The advocate has to defend the rights of the citizen in the abstract, and to defend them to the utmost—a remark which in part applies to representatives. Representatives are much more apt to insist upon the rights of their constituents than they themselves in many cases would be. Who will tell a citizen in the market, voting on a law for himself, not to give up a right if he chooses? I am well aware that the members of many estates in the middle ages were less jealous of their rights—except as far as pecuniary interests were involved—than the Greeks in the agora; but were they representatives? Had they to give an account? The more the member of the estate assumed the character of a representative, the more he was obliged to defend the rights of his constituents.

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[1] The description of a Landtag, or annual general meeting of the people, in one of these cantons, is very curious and instructive for the politician. The great deficiencies of direct democracy, unmediated by representation, are manifest. Personality must prevail; it cannot be helped, according to human nature. The state, the citizen's rights, etc., are never taken, in the abstract, on their own absolute ground.

CXL. 4. *Printing.* The art of printing, in becoming the great moving agent of European mankind, an agent which increased action in intensity and extent, naturally propelled men also in the sphere of the presentation and acknowledgment of individual rights. Printing is light: on whatever subject it falls it shows it clearer.

5. *Increased importance of money, industry; increased consideration of the industrial class.* Ancient governments had originally no pecuniary wants. The army consisted of citizens, unpaid for the service; the vessels were fitted out by way of special taxation, as before mentioned, under the name of *λειτουργία.* (See Heeren's work, quoted several times.) Rome was a conquering state, and obtained her treasures from subjected provinces. In the times of feudalism, governments wanted likewise comparatively but little money. Few concerted national actions of a peaceful character took place, the feudal monarch supported himself by the income of his lands, and for war every vassal armed himself and his men.

In more modern times, however, when governments had become cabinet governments, the expenses of cabinet armies, cabinet wars, and a thousand other undertakings, caused great expenses, far exceeding the revenues derived from crown domains. Whence can the money come? Conquest cannot last forever. Labor is the only permanent source of money; it must come, therefore, out of the pockets of the people, who consequently attracted more attention. Nobility and clergy, paying no taxes, or very limited ones, were of no use as to furnishing money. The industrial classes rose in importance, their situation and rights began to be discussed; bondage was more and more contracted and removed, free industry became to be considered as the true source of public wealth, and the industrial class, formerly consisting of slaves or serfs, was acknowledged as honorable.

In the early times of Thebes, no one was admitted to a share in government who had carried on any trade for the last ten years (Arist., Pol., iii. 5); in our times, polytechnic schools are established in many countries[1] which give a thorough and enlarged education and corresponding standing in society, to the industrial class.

By the continued pecuniary wants of governments, those who have to pay the money have obtained, as has been shown, a most peculiar, salutary, and continued control over government in those states in which the primitive and ancient principle, that he who has to pay money must be asked for it, and therefore may refuse it—common throughout in the middle ages—has been retained or re-established. Even in states where this has not taken place, the governments are obliged to treat the people with far different regard from what they would do did they not stand in need of money. The want of money and the alienation of crown domains have given the commons an effectual check upon government, for which we cannot imagine any other possible political contrivance equally efficient, safe, and easy in operation.

The history of the industrial class from the times when slaves only carried on the different trades, to the period when, though practised by free men, they nevertheless were degrading in a degree, and again to our own times, when their alliance with the sciences becomes daily closer and closer—a part of history in which that of the rise and importance of cities largely enters—is of the highest interest in the history of civilization in general.

The large body of the people have entirely changed their position, and their rights are acknowledged accordingly. As late as at the French diet of 1614, the speaker of the third estate was obliged to address the king on his knees, while those of the clergy and nobility addressed him standing. When president De Mesnes, deputy of the third estate, ventured to say that "France is the common mother of all, and has nursed all at the same breasts," and that the third estate are the younger brothers, and that if treated as part of the same family they would honor and love the others, he gave great offence to the nobility, and their president complained on the spot that "the third estate intended to establish fraternity with them, as if they were of the same blood and equal virtue." Now the king of the French is called the king of the large class of citizens (commons) by way of excellence, and Mr. Dupin, the procurator-general of the court of cassation, and president of the chamber of deputies (speaker of the commons), in his late famous argument on duelling in that court, said, "As to the villanous serfs from whom we of the present day have the honor of descending," etc. (French papers of June, 1838.)

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[1] I have enlarged upon this subject in my "Constitution and Plan of Education for Girard College for Orphans," printed by Order of the Board of Trustees, Philadelphia, 1834.

Science is daily adding to the importance of all industrial activity and giving rapid increase to the vivid intercommunication of near and distant communities, and with it elevating the great body of the people. Events such as the arrival of the first steam-packet of a regular line, in the month of April, 1838, at New York from England, reducing time and space, are exponents of most powerful changes. More, infinitely more, can be done in the same time, with the same capital; while the rapid exchange of knowledge increases greatly the intensity of action.

CXLI. 5. *Discovery of America.* Of the many consequences of the discovery of America, deeply affecting the whole of modern European history, I will mention here only the expansion of commerce and its increased importance—another branch of industry, with the growth of moneyed capitals and their increased importance; while until then wealth had consisted almost solely in real estate, and the land was owned by the nobility or the church. Nobility depended upon birth, but money could be acquired by every one. Money must be acknowledged in history as a very powerful popular agent.

END OF PART FIRST.

PART II.

POLITICAL ETHICS PROPER

BOOK III.

POLITICAL ETHICS PROPER.

CHAPTER I.

Reciprocal Relation of Right and Obligation. — The more Liberty, the more Rights, hence the more Obligations. — Danger of Absolutism in Republics, without due Attention to Political Ethics. — Additional Reason of their Importance derived from our Race.—Another Reason, from the Period in which we live and the Direction which the Study of Political Sciences of late has taken. — Private Morality necessary for Public Success, especially in Free States, yet not sufficient.—Justice and Fortitude or Perseverance chief Virtues in Political Life. — Justice the Basis of the other Virtues. — Reputation for Character of Individuals and States chiefly founded upon it. — Power and Passion equally apt to blind against Justice.—Justice affords Power.—Coteries are unjust because they see distortedly. — May we do what the Law either positively, or by not prohibiting, permits?

I. It has been my endeavor to show, in the first part of this work, the original connection between right and morality, inasmuch as right is a relation necessarily proceeding from the moral character of men, and which can possibly exist only between moral beings. This connection, however, extends farther: it is a lasting one. Where men, of whatsoever condition—rulers or ruled, those that toil or those that enjoy, individually, by entire classes, or as nations—claim, maintain, or establish rights, without acknowledging corresponding and parallel obligations, there is oppression, lawlessness, and disorder; and the very ground on which the idea of all right must forever rest—the ground of mutuality or reciprocity, whether considered in the light of ethics or of natural law—must sink from under it. It is natural, therefore, that wherever there exists a greater knowledge of right, or a more intense attention to it, than to concurrent and proportionate obligation, evil ensues. What may thus be found a priori is pointed out by history as one of its gravest and greatest morals. The very condition of right is obligation; the only reasonableness of obligations consists in rights. Since, therefore, a greater degree of civil liberty implies the enjoyment of more extended acknowledged rights, man's obligations increase with man's liberty. Let us, then, call that freedom of action which is determined and limited by the acknowledgment of obligation, Liberty; freedom of action without limitation by obligation, Licentiousness. The greater the liberty, the more the duty. For, the less bound or circumscribed we are in our actions from without, the more indispensable it becomes that we bind ourselves from within, that is, by reason and conscience. This is the fundamental law of all political ethics, applicable to all periods and all political relations.

Yet there are weighty reasons, which demand of us, in particular, that we should earnestly and conscientiously consider this fundamental law in its many applications and binding consequences.[1]

II. Towards the end of the preceding book, the different character and yet equally injurious effect of monarchical and democratic absolutism have been spoken of; for our present purpose it is necessary to say a few more words on this subject. Monarchical absolutism, it was shown, is not real, in so far as the monarch, individually, can have no power; it must be *lent* him, he must be *supported;* and, again, it is substantial, in so far as individual responsibility goes. In his name the acts are done; of him the people, once risen, demand justice, and to him the wrongs of his menials are ultimately laid. However great his power, however many thousands he may find ready to do as he bids, still, what is done is at his peril. There is a visible despot, and therefore a visible malefactor when the time of reckoning comes; while the consciousness that he must lend his name to all acts, and that "the water, when calm, supports the boat, but, if roused, will overwhelm it,"[1] may keep even the Chinese emperor from too oppressive measures.[2] Democratic absolutism, on the other hand, is real, inasmuch as it demands no support; it is an over-flooding power itself; and it is not substantial in so far as it is nowhere visibly embodied; it acts, it strikes, with fearful certainty; but the moment after, where can the author of the deed be grasped? Responsibility vanishes; the injured party cannot seize it, and the absolute actors neither fear the rising of those over whom they sway, nor do they themselves feel so distinctly their responsibility, because it appears divided. Their conscience feels appeased; although, as we have seen, there is, in fact, no divisibility of anything which belongs to morals.[3] But liberty, or untrammelled action, without conscientiousness of action, which we have called licentiousness—rights, I repeat, without acknowledged obligations—necessarily lead to absolutism, first to democratic, and, through it, generally to monarchic. A sincere reverence, therefore, for liberty demands imperatively that we should well know our political obligations, both that liberty may not degenerate into absolutism, and that, on the other hand, we should feel our duty in prizing, cherishing, and supporting, keeping, watching, and jealously defending this last and highest of earthly goods, lest the forms of freedom with the spirit of bondsmen become only the fitter means of thraldom. For a government which rules with the traditional forms of past liberty over a servile people shifts its responsibility of all odious acts upon the people themselves. "Parliaments without parliamentary power are but a fair and plausible way into bondage," was the ruling maxim of Pym. And this "parliamentary power," of course, presupposes parliamentary spirit, that is, true love and esteem of liberty. Tyranny and mere tranquillity are things for which men may be trained, into which they may be forced. There is no more quiet and peaceable people on earth than the Chinese. But liberty is too noble in its nature to be forced; to support, enjoy, and perpetuate it, man must cultivate his best and noblest parts.[1] An active and preventive police may do much towards making fit subjects; but the essentials of a freeman are within; they cannot be forced upon him from without; they must grow out of his moral nature. They require character, love of justice, love of truth, self-respect, devotion to our neighbors, esteem of our kind, and ardor of cultivation.

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[1] Reciprocity, as a necessary characteristic of right, and absolutism (which at once ensues where this reciprocity is denied), as well as the inalienable moral character of man, and the primary foundation which this character forms for all jural relations, have been, the author hopes, sufficiently treated of in the first part.

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[1] A Chinese emperor—so say the ancient books of the Chinese—said to his heir, "You see that the boat in which we sit is supported by the water, which at the same time is able, if roused, to overwhelm it: remember that the water represents the people, and the emperor only the boat." T. F. Davis, The Chinese, vol. i. p. 212.

[2] The same author makes the following remark (vol. ii. p. 428): "The emperor—the theoretical father of his people—does not find it so easy *openly* to impose new taxes as his necessities may require them; and his power, though absolute in name, is limited in reality by the endurance of the people, and by the laws of necessity." See likewise Book ii. chap. 6, § 65 et seq.

[3] Many years ago, on my way through Geneva, I became acquainted with a member of the former French Constituent Assembly, who had always acted with Robespierre, so long as the latter was at the head of his party. The manner in which this exile spoke of the "poor Robespierre," "the virtuous man to whom sufficient time had not been allowed to develop his plans,'' greatly attracted my interest. For the first time in my life I saw, face to face, one who had acted in those scenes, to me already seeming like a distant and fearful history. I could not help putting a number of questions as to the massacres and those enormous sacrifices of life, when he spoke of liberty. When I suggested that surely for the priests who were slaughtered there was no liberty, he answered that it was believed they conspired with the foreign armies. When I repeatedly urged the question whether they really did conspire, whether there was any proof, he would only shrug his shoulders and say, "On le croyait, mon cher." This *On* made a very deep impression upon me, which time has not effaced; and has repeatedly recurred to my mind in meditating upon politics and history.

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[1] Quiet has frequently been mistaken for civilization. The Chinese have a saying, "Better a dog in peace than a man in anarchy." Mr. Laplace, a French circumnavigator, says, "I repeat that the Chinese are very much our superiors in true civilization—in that which frees the majority of men from the brutality and ignorance which, among many European nations, place the lowest classes of society on a level with the most savage beasts," and Mr. Davis, *ut supra*, vol. ii. p. 29, adds, "Monsieur Laplace is quite right: the lower classes of the Chinese people are better educated, or at least better trained, than in most countries." I fear that the words "or at least better trained" contain the essence of the remarks of both these gentlemen. If we peruse the Chinese novels which have been given to the Western public and are represented by the best Chinese scholars, among others by Mr. Davis himself, as faithful pictures of their life, and which, indeed, bear great internal evidence of truth, we shall not feel tempted to desire to exchange our civilization for theirs, however willingly we may acknowledge all those points in which they are really our superiors. Rather all the disturbance of the West, so that it be a fermentation which promises a better, purer state, than Chinese peace and stagnation.

III. As men, therefore, and especially as freemen, we are bound to acquaint ourselves thoroughly with our ethic relations in politics. We shall find that we are not the less so if we contemplate to what race we belong and in what period we live.

From the vast continent of Asia it appears that all civilization originally flowed, and to it we are invariably led, as to the fountain-head of history. It is there that all those religions originated which count the largest number of votaries;[1] there that the ancient Sanscrit was spoken, the grandest idiom uttered by human tongue, and the earliest sister of so many Western languages;[2] there that traffic commenced, and larger empires first were founded; and thence that we received most of the first inventions in all the simpler and therefore most important mechanical arts. But the Europeans and their descendants in other parts of the globe have perfected and developed all these. Christianity rose in Asia, indeed, but what effect has it exercised on the Asiatic nations? In Europe it penetrated to the inmost elements of society. Empires were first formed in the East, governments were first there established on a larger scale, but, with few exceptions, those tribes over which they hold sway live on from thousands to thousands of years in the torpor or the anarchy of despotism. The arts and commerce started into existence indeed, but they have been slowly perfected, in the East; many branches of industry are in the same condition in which they were a thousand years ago. There indeed many languages of surprising perfection and wonderful depth of thought were developed, when Europe spoke yet the uncouth accents of barbarism; and yet, great and noble as many of the Eastern works are, Oriental literature is very confined if compared with the vast and multifarious treasures of the West. Devastating conquerors have appeared one after the other in the extensive regions of that continent, but they appear low, with hardly any exception, if compared with the powerful genius and mental greatness of European generals, from some of the first Greek commanders to the Napoleons and Wellingtons of our own times. Architecture and sculpture originated in the East, and gratefully we ought to acknowledge it, yet Europe perfected, purified, and refined also here. Compare the Hindoo idol or Egyptian statue with the works of Phidias or Thorwaldsen, the mighty piles of Asiatic temples with Grecian or Gothic architecture, in taste and the expression of thought.[1]

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[1] Buddhism, Brahminism, the doctrine of Confucius, and that of Zoroaster, together with the three monotheistic religions, Judaism, Christianity, and Mohammedanism, are all of Asiatic origin.

[2] Comp. Franz Bopp, Comparative Grammar of Sanscrit, Zend, Greek, Latin, Lithuanian, Ancient Sclavonic, Gothic, and German, Berlin, 1st ed., 1833–1852 (in German); T. C. Prichard, Eastern Origin of the Celtic Nations proved by a Comparison of their Dialects with the Sanskrit, Greek, Latin, and Teutonic Languages, London, 1831; and Etymological Enquiries in the Province of the Indo-Germanic Languages, with particular reference to the Mutation of Sound in the Sanscrit, Greek, Latin, Lithuanian, and Gothic (in German), by F. A. Pott, Professor in the University at Halle, Lemgo, 2d ed., 1859 and onw.

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[1] Some readers may not be willing to allow the justice of my remark if applied to Gothic architecture and that of Egypt, the whole civilization of which forms a connecting link between Asia and Europe, and may undoubtedly be included, in several points of view, in Asiatic civilization. The many and magnificent recent works on Egypt have revealed to us, among other treasures, a grand, thoughtful, and beautiful architecture. Which of the two might be considered as bearing witness to a more developed state of the art, as closely connected with the inner man, is not to be decided in this place. In favor of whichever side the decision would be, it does not change our position. It is perhaps one of the most striking proofs of the refined intellect of the Greeks, and one closely connected with their national being, that they were the first who elevated themselves so high as to separate the ideas of perfection and purity of taste from those of mighty masses. A single column of Grecian taste is still a whole, a separate work of art in itself, independent and relying on its own harmony and correctness. As to Chinese art, striking and not without taste in many instances, it nevertheless appears to me, if I may express it thus, as refined and tasteful child-

Three times did Asia send her swarming hordes to conquer the West, but the Persians, Mongols, and Arabians were repelled, although in the first case but a small country had to fight against the armies of a gigantic empire, and in the latter two the invading hosts were flushed with recent victories, while Europe was prostrated by disorganizing eruptions. Whatever view of the superiority of European civilization we may take, and however ready we may be to acknowledge those imperfections and vices which unfortunately belong more peculiarly to our own race, that is, the white Caucasian race as developed in Europe and the Western hemisphere, it cannot be in fairness denied that mental action, both in variety and intensity, is infinitely greater in the progressing European race than in any other on the globe, and that among those things which most characterize our race, political superiority stands among the first. Political power, political organism, state, right, law, are terms which have received an import, and the subjects which they designate have received a development, in this pre-eminent race, far greater in extent and superior in kind to that which any Asiatic, African, or aboriginal American tribe has given them. Heeren, who has shown, probably more clearly than any one before him, how much we owe to the early East, in commerce and so many other branches of civilization, dwells on this European superiority,[1] and ascribes it in a great measure to the institution of monogamy, peculiarly European, and to political wisdom. But what is this wisdom? Certainly not shrewdness, cunning, mere prudence and sagacity; for Asia has produced innumerable characters who excelled in these

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ishness. Everything which excites the admiration of the child—contrast (in form and color and conception), peculiarity (and monstrosity), and gaudiness—seems to form the foundation of Chinese art and taste. How totally different is the spiritualized art of the Greeks, which delights the more the more refined the mind is, and is the chaster and the nobler the more purely it follows out its own principles!

[1] Comp. his Historical Researches into the Politics, Intercourse, and Trade of the Principal Nations of Antiquity, translation, Oxford, 1833, 3 vols.; and Introduction to his Sketch of the Political History of Greece, translation, Oxford, 1834.

qualities. Indeed, if we peruse the many Asiatic works with which British literature has teemed for the last twenty years, we are struck with the fact that nearly all those men who most distinguished themselves in Asia by powerful actions were consummate masters of craft and cunning, while every one who has visited those parts of the East where large numbers of Europeans have become known is aware that the natives speak of the greater love of truth and mutual dependence of the Western people as a matter of course.

The true cause seems to be that Europe first broke the unhappy chains with which the patriarchal principle, if applied to larger communities, that is, if family relations are made the fundamental principle of the state, fetters the people in stationary despotism,—a species of government to which, it seems to me, polygamy must almost irresistibly lead, and which I cannot imagine to exist long in connection with monogamy; that it was in Europe that Right was first distinctly grounded upon man's ethical character; that there, consequently, State and Government first became subjects of deep inquiry, because they were not any longer considered either as mere effects of force or the unalterable family relation; and that there man first maintained liberty as a civil institution and became ready to bear great sacrifices for it. The peculiar geographical situation of Europe aided, it is probable, greatly in this rapid and unceasing development; for although neither climate nor soil determines alone the character of a nation, they, and especially the means or ease of intercommunication afforded by the geographical configuration of extensive districts, still exercise a powerful influence upon it, which is peculiarly strong in the earlier stages of civilization. But this very consideration leads us again to perceive the superiority of the European race. For China enjoys almost the same advantages with Europe and the United States in respect to climate, soil, and rivers; it has remained severed by its geographical position from many of those disturbances which have influenced and afflicted other Asiatic nations,—circumstances which close observers have pointed out as prominent causes of the superiority of Chinese civilization over that of all the rest of Asia, Persia not excepted.[1] Yet if we compare that most eastern Asiatic nation

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[1] The following is an interesting extract from the work of Mr. Davis on China, already quoted. In the introduction, pp. 7 and 8, he says,—

"The early advancement of China, in the general history of the globe, may likewise be accounted for, in some measure, by natural and physical causes, and by the position of the whole of that vast country (with a very trivial exception) within the temperate zone. On this point the author will repeat some observations which he long since made in another place: that 'an attentive survey of the tropical regions of the earth, where food is produced in the greatest abundance, will seem to justify the conclusion that *extreme* fertility, or power of production, has been rather unfavorable to the progress of the human race; or, at least, that the industry and advancement of nations have appeared in some measure to depend on a certain *proportion* between their necessities and their natural resources. Man is by nature an indolent animal, and without the stimulant of necessity will, in the first instance, get on as well as he can with the provision that nature has made for him. In the warm and fertile regions of the tropics, or rather the equinoctial, where lodging and clothing, the two necessary things after food, are rendered almost superfluous by the climate, and where food itself is produced with very little exertion,* we find how small a progress has in most instances been made; while, on the other hand, the whole of Europe, and by far the greater part of China, are situated beyond the northern tropic. If, again, we go *farther* north, to those arctic regions where man exists in a very miserable state, we shall find that *there* he has no materials to work upon. Nature is such a niggard in the returns which she makes to labor, that industry is discouraged and *frozen*, as it were, in the outset. In other words, the *proportion* is destroyed; the equinoctial regions are too spontaneously genial and fertile; the arctic too unfriendly barren; and on this account it would seem that industry, wealth, and civilization have been principally confined to the temperate zone, where there is at once *necessity* to excite labor and production to recompense it! There are, no doubt, other important circumstances, besides geographical situation, which influence the advancement of nations; but this at least is too considerable an ingredient to be left out of the calculation.'"

It will be recollected that, on various occasions in the first part of this work, much importance has been attributed to two principles of man's social development, namely, that everything which characterizes man as such must first be developed, except his physical nature, and that the first starting-point of everything indispensably necessary to man's social development has been indissolubly connected by the Creator with the material world. We observed it with regard with the western European race, in intellectual and political civilization, it will not be difficult to form a just decision.

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* "See the observations of Humboldt on the use of the banana in New Spain." Every one who has been in the West Indies can testify to the justness of these remarks.

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to the family and other necessary institutions. In the present case the principle is manifest. Man ought to labor; yet would he have labored from the beginning? The most genial regions are the earliest in the advance of civilization, especially Hindostan. Its luxuriance encouraged the first starting; but the luxuriance is too abundant; man relaxed under it; only the first effort was excited; *energy* showed itself farther north, in Egypt, Greece, Rome. At later periods man found assistance in a thousand discoveries, which enabled him to carry civilization through a long winter, both in a physical and mental point of view. Civilization extended farther and farther north, and a country like Canada, which would never have induced man to *start* in the path of industry, may still become a flourishing one. The general remarks of Mr. Davis are undoubtedly true. If the negroes of Hayti could not contrive to live by paying a trifling attention to a few banana-trees, they would not have allowed all the sugar-fields to go to ruin. Hence likewise the evil consequences which the introduction of the potato into some countries has produced, although its good effects, upon the whole, in warding off famine, formerly so frequent, will be denied by no one. But it is certainly true that the potato has frequently operated in the northern regions as the banana has in the tropical. It made the bare subsistence of a rapidly-increasing population possible, and thereby lowered the standard of comfort, industry, and, consequently, of energy and civilization in general.

A geographical consideration of importance respecting European civilization is the much greater extent of sea-coast in proportion to the area of Europe, compared with any other of the four large divisions of the globe. Europe, as Alexander Humboldt justly expresses it, is the most articulated of all parts of the world. The sea-coast, however, is favorable to civilization, and, in general, to the spirit of liberty, were it even for no other reason than that the sea, erroneously called by the ancient poet Dissociabilis Oceanus, is the great means of communication, and that seafaring is favorable to manliness and boldness. Prescott, in speaking of the republican spirit of the Aragonese, makes some pertinent remarks on this subject in his History of Ferdinand and Isabella, vol. i. p. 59, et seq.; and the observations, somewhere in Heeren's works, on the indented shores of Greece, apply more or less to Europe in general. Mr. Julius, in his late work, "The Moral Condition of North America," in German, 2 vols., Hamburg, 1839, has the following passage (vol. i. p. 426): "If we take the area of Europe as the unit, we find that in the almost unbroken triangle of Africa, three times as large as Europe, the width is to the length as one to one, so that the triangle becomes equilateral. The area of Asia is more than four times that of Europe, and her width to the length of the circumference is as one to four: in America, almost four times as large as Europe, the proportion of the width to the length of its circumference is as one to five, and in Europe as one to six. Africa has a sea coast of about 3800 German miles; Europe, one-third as large, 5400; Asia, more than four times as large, 7000 German miles; and America, nearly four

This Western race, which is distinguished by an onward movement from the times of its first dawn of civilization, is at present in one of those periods which are peculiarly stirring, similar, perhaps, in its character of universal and thrilling activity, to that of the Reformation, preceded as it was by the exciting period of maritime discoveries. We are, indeed, ever apt to consider objects near us of peculiar magnitude; but the calmest mind, the most comprehensive intellect familiar with all the most active periods of history, will probably not deny that our period is a peculiarly active one, and one of those epochs in which man seems to employ all his energy in realizing some important idea. A time when in the East the Turkish empire is busily engaged in severing itself from Asiatic civilization and joining European, and in the West a railroad is building to effect that for which Columbus sought so long and ardently in vain, and when the two poles of this conductor from the East to the West, from the Atlantic into the Pacific, will be brought in contact with other hemispheres by the busy steamboat, braving wind and current,—such a period seems not to be a common one.

Future ages, perhaps, will look upon our period as a pre-eminently political one; as that period in which governments from cabinet governments became national and popular governments, superseding the period of court politics, when, as an eminent continental writer expressed it, "the court law came to be made the common law;"[1] as the period in which broad ideas of substantial civil liberty were more clearly defined and more widely secured for a large number of nations; in which the primary relation of the citizen to the state became a distinct subject of intense political action; as the age of constitutions. If so, it behoves every one to perform conscientiously his task in this animated time. But, whether it be so or not, certain it is that many entirely new agents of

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times as large as Europe, has a sea-coast in length between Europe and Asia. Or, if we consider for a moment the area of all equal, the lengths of sea coast of Africa, America, Asia, and Europe are in the proportion of 38, 48, 51, and 162."

[1] Justus Moeser, Osnabrück. Gesch., i. part i. 23.

human society have come into play and act with an intensity which gives a far greater importance to everything connected with politics, for weal if we do our duty, for woe if we neglect it, than at any previous period, except that of antiquity.

IV. A last and, in my opinion, an important reason may be urged, why we should take the ethical elements of politics into serious consideration just at the present period. Among the most prominent characteristics of our times seem to be a general exertion to diffuse knowledge, a successful tendency to popularize governments, a most extensive industrial activity, arising in fact out of the diffusion of knowledge, or, as it has previously been called, the union of science and industry, and the peculiar attention which for the last seventy or eighty years has been paid by many gifted minds to the productive energies of nations and all the laws which regulate the exchange of labor and produce. Since Locke wrote his treatises[1] on government, few distinguished men in England or America have written exclusively on the principles of politics or the first elements of the state; and ever since Adam Smith, the attention of political writers has been directed almost wholly to the investigation of those subjects which are more or less closely connected with production, exchange, and consumption, commerce, industry, population, and pauperism,—in short, to subjects of political economy. These inquiries into the material interests of human society are of the greatest importance, and it would show great ignorance indeed should any one attempt to deny that they have exercised a powerful influence upon the whole European race and the peaceful intercourse among the states into which it is divided. But it will always happen, when some new ideas of vast importance break through previous darkness, and men strive to realize them in practical life on a large scale, after having been conceived and cultivated by gifted individuals in the necessary historical progress of civilization, that for a time they absorb the human mind and general mental activity, to the exclusion of others of equal or greater importance. We thus find that zealous inquiries into the material interests of the masses have colored investigations which belong to other provinces, and that self-interest, not indeed unfrequently qualified as "enlightened self-interest," has been assumed as the sole principle of all questions relating to man's political existence; that his activity, ingenuity, and industry in the material world have been assumed as the sole points in question with reference to our social state. Were we to study the causes of this phenomenon, we should be obliged to go as far back as to the period when governments and in fact the various tribes became gradually nationalized, to the discovery of America and the Reformation, which, by the secularization of ecclesiastic property and the new turn which it gave to the European mind in general, imparted to industry also a peculiar impulse.[1] This cannot be done here; but it will appear evident that unless we again direct our attention, manfully and steadily, to the ethical elements of the state, we shall expose society to the greatest dangers in many of its most sacred interests. To contribute my humble share to this noble object I have undertaken this work. I am not writing a book of political casuistry. The casuist may settle a thousand cases of conflict, and the next complex one offered by practical life may be as perplexing as the first. Nor have, in all probability, any works of casuistry, however ingenious and dialectic they may be, essentially contributed to guide consciences in the path of duty, while, as we all know, not a few have, by their very ingenuity, blunted the moral edge, instead of sharpening it. If I succeed in disseminating a few salutary principles, in pointing out some dangers, in aiding to give moral vigor to political existence, and, above all, in inspiring some hearts with a due appreciation of the task we have to perform as citizens and as members of our race, with a genuine love of liberty and a conscientious desire to maintain it; in convincing any that the prize for which we ought to strive, according to our political nature, is a most noble one; in arousing a few from political apathy, so dangerous to every society, and in moderating others, who forget in their ardor that duties are the necessary concomitants of rights; if, in short, I succeed in impressing some with the sacredness of their political relations, or indeed only in inciting renewed attention to these grave subjects and in warming some hearts with true patriotism, I shall consider my object fully attained, and believe that my life has not been spent entirely in vain, in promoting the great objects of that period in which my lot has been cast.

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[1] In Heeren's Historical Treatises, translation, Oxford, 1836, there is an interesting article on the Rise, Progress, and Practical Influence of Political Theories, of which I would recommend the first part, which is historical, to the perusal of my reader. The latter (political) part seems to me indifferent.

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[1] Political Consequences of the Reformation, by Heeren, u. s. The work of Adolphe Blanqui, Histoire de l'Économie Politique en Europe, Paris, 1838, contains many valuable facts.

V. Politics, in the course of this work, has been compared to architecture, with reference to the necessary attention which we must pay to the materials at our disposal, as well as to the object which we have in view. But here the comparison stops, for the component parts of the state are living beings, individual men; and whatever well-intentioned laws or institutions we may establish, they will either be wholly inoperative or be perverted to a contrary action from that for which they were intended, if they do not find a corresponding moral sense in the greater number of the people. Laws may do much to repress evil, vice, or crime: indeed, the mere fact that these are repressed or punished, as soon as known, is not only an effect of the moral state of society, but confirms and diffuses it. Yet the operation of the laws themselves must always first depend upon a corresponding sense of duty and virtue in the people. Dishonesty may be rendered punishable, and will be punished so long as a sense of honesty is diffused in the community; but this honesty itself cannot be enacted. We find, therefore, in many periods of general degeneracy the greatest number of those laws which strive to enforce the primary virtues, upon which men have at all times acknowledged the state essentially to rest; but those laws alone have never been able to arrest the downward course of depravity when once it had really become general. The decline of Greece and Rome exemplifies both these positions.

No individual in China can hold a magistracy in his native province, and the residence of officers is periodically changed, to prevent the growing up of connections between them and the people, of bribery and insecurity of government; and, for a similar reason, the Spanish judge in the colonies—I do not know what law exists respecting this point in Spain itself—is prohibited from marrying in the place of his appointment; yet the government is perhaps nowhere less powerful and more insecure, nor are bribes more the order of the day, than in the first country, nor is the administration of justice more corrupt in any country than in several colonies of the latter. If jury, judge, and witness falter in their duty, no Russell can be saved. This is a truth so simple that we should hardly expect it ever to have escaped the mind of legislators; yet all codes of former times are filled with laws which proclaim what cannot be ordained, or extend over so purely private matters as to resist all demands or ordinances from without. There are laws in those codes which ordain that the subject shall love the king; and the Spanish laws prohibit "crying and other immoderate grief for the defunct,"[1] while they decree dreadful punishments for "erring, and not believing what the holy church holds and teaches."

VI. Nothing would be farther from me than the intention of conveying an idea that wise laws are unimportant. They are all-important: they support, aid, check, elevate, cultivate, and perpetuate. Good laws are the best legacy which one generation can leave to another; the greatest blessing of a community is a long-continued series of wise and sound laws. We have but to look at such a law as enacts a general school system: still, the first fulcrum on which they lean, so that they can operate, is the sound state of the community—a fact which the ancients well knew and repeatedly mentioned. Without general morality, that is, good customs, there can be no sound commonwealth; nor can there be general without private morality; but private morality is best preserved where it has grown into good custom. "Custom," says Bacon, "is the chief magistrate of man's life; men should, therefore, endeavor by all means to obtain good customs."

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[1] "Ninguno haga llantos, ni otros duelos inmoderados por los defuntos, especialmente desfigurando y rasgando la cara," etc. Extracto de la Novísima Recopilacion de las Leyes de España, vol. vii., Madrid, 1815, lib. i. titulo 1, 9.

It is evident, therefore, that in this point of view every virtuous disposition, morality in all its manifestations, is of elementary importance for the well-being of the state. But there are certain virtues, as well as vices, which are of peculiar importance to the state, because they either prompt more frequently to public acts, or come more often than others into play in political life. Of these I propose to say a few words before I discuss some of the most important situations in which the citizen is called upon conscientiously to act, although not guided by any law.

Before I close this section I would refer once more to the remarks which were made in the first part[1] on the fact that private virtues may exist without a sufficient attention to public ones. Indeed, it has not been maintained, in the above remarks, that private morality alone, be it ever so extensive, insures public welfare. The government of a people may for a long time have so effectually acted upon the principle of interference, and may have smothered so entirely all public spirit, public interest, and public activity in the people, that the state may sink despite all morality, and when a time of danger arrives the state may break down like an undermined fabric. I do not believe that any one will charge the Prussian people, as they were before the battle at Jena, with general depravity. Yet the state crumbled rapidly into pieces after that battle had been lost—more easily than any state ever could have done in which the people at large acted vigorously with the government, whatever the final issue of the war might be. This same epoch, however, furnishes us likewise with an example how vigorous a support politics derives from the good morals of a people, and how rapid may be the growth of public spirit, if sown upon them. Had the Prussians been a degenerate race, soiled with vice, meanness, and crime, would they have gathered national strength even under the iron dominion of a conqueror, which weighed most heavily upon them, and would they have risen, small and shorn as their country and means were, so successfully against so powerful a foe? The rise of Prussia in 1813, with the measures which prepared it, and the most strenuous national exertion to expel the conquerors, shortly after that country had been dismembered, forms an instance of great interest in the sphere of political ethics.

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[1] Chapter v.

Private morality in *free* countries, however, will go very far to insure public success: yet even here we must not forget that moral rectitude alone cannot cause any state to flourish; good counsel is likewise necessary. Laws must not only be made by well-meaning people, but they must be wise laws; and while the moral tone of society is of primary importance in free countries, prudence and sound counsel in the statesman or law-maker are not less so. For wise laws must be made with reference to the citizens themselves, the period they live in, and the neighbors who surround them.

On the other hand, there have been distinguished writers on subjects of politics, who seem to have considered good laws and wise institutions as the first foundation of political success, and as those agents by which general good conduct is first engendered, or which have secured success to many states, although private virtue existed only in a very limited extent. When power was mistaken for government, and government for state, it was but natural that increase of power, brilliant external success, conquest, or other aggrandizement should at times have been taken as a sufficient index of political success; yet even then it was frequently not considered whether degradation and ruin followed this very success. Or, the standard of judgment has been a certain preconceived index of good government, for instance a certain division of power. Nor has sufficient attention been paid to the fact that frequently the good effect of former better periods is felt in later worse ones, yet only for a time, because the degenerate state of the latter is unable to perpetuate them.

Hume seems to me to have fallen into this latter error when he says, "The ages of the greatest public spirit are not always most eminent for private virtue. Good laws may beget order and moderation in the government, where the manners and customs have instilled little humanity or justice into the tempers of men. The most illustrious period of the Roman history considered in a political view, is that between the beginning of the first and end of the last Punic war; the due balance between the nobility and people being then fixed by the contests of the tribunes, and not being yet lost by the extent of conquests. Yet at this very time the horrid practice of poisoning was so common that during part of the season a prætor punished capitally for this crime above three thousand persons in a part of Italy."[1] I think that if the history of any state teaches in bold examples the political value of virtue and the political misery following upon depravity, in short, the almost constant reciprocal action of private and public virtue in free states, it is the history of Rome. Take those virtues which form the common stock of man's morality—justice, honesty, and a pure family life—and say whether a state can lastingly succeed without them; whether they form not the very sap which gives soundness to the whole body politic. One who knew well the operation and effect of many political elements, both by his station in life and because he lived in a period which followed a time of depravity in the upper classes equalled only by the vices of a very few other corrupt periods,—Napoleon,—said, "Public morals are the natural complement of all laws; they of themselves form an entire code."[1]

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[1] Hume's Essay, that Politics may be reduced to a Science—Essay iii. vol. iii. of his Philosophical Works, Edinburgh, 1826. [Two thousand is the number given by Livy, xxxiv. 41, on the authority of Valerius Antias, whom he himself distrusts: comp. iii. 8.]

VII. Of all the virtues peculiarly important in politics, the chief place must be assigned to justice and fortitude or perseverance; for honesty and moderation, without which no state indeed can last or flourish, may be comprised within the first, if we take it in its widest sense; yet they deserve particular mention. Justice and Fortitude may well be called the two elementary virtues of every citizen, no less than of the statesman in particular.

Justice—if we designate by this sacred word that virtue which is the constant will, desire, and readiness faithfully to give every one his due, and if we understand by *due* not merely that to which every one has a right by the positive and enacted laws of the state, but that which is his as man, as individual, as moral being, and as our neighbor—is that virtue which is embodied in the great practical moral law that we should do even so to others as we would that they should do to us. Justice was early acknowledged to be the supreme virtue, and often called by the ancients the only virtue, including all others;[2] it is that virtue or ethic disposition which prompts man to acknowledge others as his equals, and thus becomes, as we have seen, the very foundation of the state, and remains at once its cement and energy; that virtue which above all others establishes confidence, peace, and righteousness among men, individually and collectively, as states or nations, and comprehends fairness, equity, and even clemency. For if in matters of law we distinguish the latter from justice, if we establish courts of equity in contradistinction to courts of law, or give to the chief magistrate the privilege of tempering justice with mercy, we mean in this case by justice the awarding of every man's due according to the established laws of the land, which the jural character of the state requires to be the rules by which the actions of its members should be judged. But as we are conscious that laws cannot be so perfectly framed as to meet every possible complex case, and that, framed in human language as they must be, their exact application must sometimes defeat their own ultimate end, namely, true justice, we vest somewhere the power to determine causes "in which reason and justice require that the rigorous application of the rules of common law should be mitigated," or to release the offender from punishment in cases in which the law, according to all the circumstances, operates harshly. Upon this ground alone can the privilege of pardoning be maintained with any reasonableness, for it cannot have been bestowed for the purpose of screening real guilt, according to caprice, weakness, or partiality. It is therefore *essential* justice only which in these cases is made to supersede *apparent* justice. There may be cases indeed, by way of exception, in which pardon is granted wholly from generosity or on prudential grounds; for instance, when an offence against the chief magistrate personally is remitted.

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[1] Las Cases, Mémorial de Sainte-Hélène, vol. vii. p. 123, Paris, 1824.

[2] *'Εν δὲ δικαιοσύνῃ συλλήβδην πᾶσ' ἀρετή 'στι.*—"Justice comprises all virtue." (Theognis of Megara, one of the Gnomic poets.) "Justitia, cui sunt adjunctæ pietas, bonitas, liberalitas, benignitas, comitas, quæque sunt generis ejusdem." (Cic., de Fin., v. 23, 65.) Thus *δίκαιος*, "just," is used in the New Testament to denote the highest degree of virtue and purity, and the word righteous (from Right), by which the original *δίκαιος* is rendered in English, with its comprehensive meaning, according to which "it includes all we call justice, honesty, and virtue, with holy affections, in short is true religion," points to the same connection of ideas, and in the German Bible the simple word *gerecht*, that is, just, is used where in English righteous stands.

The Hindoo Ordinances of Menu say, "The only friend who follows men even after death is justice: all others are extinct with the body." Translation by Sir William Jones, London, 1799, vol. iii p. 276.

VIII. That justice, if it means the unswerving and incorruptible meting out of every man's due, the protection of right, is the most indispensable virtue with regard to the state as the strictly jural society, and is in fact its very essence, has been sufficiently dwelt upon in former chapters, where in fact one of my chief endeavors has been to present it in as strong a light as possible. "There is but one means to render a government firm; this is Justice," said Carnot, when the question was debated whether the imperial crown should be offered to Bonaparte in order to render the government stable. And Timur, the mighty Tartar, even he said, when asked for advice by a fellow-emperor, " Sovereignty (the principate) is like a tent, the poles of which should be justice, the ropes equity, and the pins philanthropy; in order that it may stand firm against the blasts of adversity."[1] A great truth in the peculiar Tartar dress of the roving nomad.

But justice is not only, thus applied to positive laws, the main stay of the state, it is of like importance in all possible relations in which the citizens can be placed, individually and collectively. Nothing, as every reader well knows, gives to a man so stanch and solid a character as the conviction of the community that "he wishes to do nothing but what is right;" nor does anything give so moral a tone and consequently so vigorous a support to international transactions as the knowledge that one of the parties "demands nothing but what is right, and will submit to nothing that is wrong." "Reputation is great power," as Bolingbroke said,[2] perhaps the best authority, because he found the truth by experiencing the reverse from contrary causes: yet one of the chief ingredients of a well-established reputation, both for individuals and for states, is habitual, plain, thorough justice. Civil and social transactions and intercourse must, in a great many instances, ultimately depend upon good faith; that is, essential justice, in its most comprehensive sense. Laws may be wrested, contracts evaded, the most solemn terms may be broken, if we abandon justice and have a mind to interpret our engagements or the ethic demands of duty themselves in bad faith. That community in which injustice and bad faith are habitual cannot possibly support civil liberty. This is so true and evident that we may well dispense with any farther discussion of the subject; but it will be necessary to inquire into some cases in which we have to guard ourselves especially against injustice and an abandonment of the primary principle of right and equity.

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[1] Stewart's Translation of the Memoirs of Timur, published by the Oriental Translation Fund, p. 56.

[2] Bolingbroke to Windham, Oct. 13, 1737,—Correspondence, vol. iii. p. 494.

I believe the most important of these cases are those in which we enjoy superior power, or where no authority above us can make us responsible for our acts, and those in which passion or eagerness to obtain an advantage or defend rights blinds us. I have spoken already of the love of power and the universal feeling of offence at opposition, however loyal. Men, therefore, who enjoy power, of whatever sort, ought never to forget that they are magistrates, which means agents, servants of the state; this superior power which they enjoy over their equals has the sense and meaning only that they shall use it to serve the state. For what other reason should they be singled out from the mass? The object as well as foundation of the state, however, is justice. But when we have power for which we are not, strictly speaking, responsible, or not at all so, we are the more bound to adhere to the only law that remains, the moral obligation which demands justice.

It is well known that it is never an easy matter to obtain the satisfaction of large claims, however just, from those who have the power to refuse it or not, as they please; from legislative bodies not more easy than from princes. Ferdinand the Catholic declined paying what was due to Columbus, according to solemn agreement, because the portion of the revenue due to the navigator was large, since the revenues themselves had become large; and some extensive claims upon the United States, due since the Revolution, received but late and tardy justice. How unjust Rome showed herself to her dependents! A prince, knowing that a brilliant act of justice and disinterestedness will redound to his personal honor, finds, not unfrequently, a motive to do right in this adventitious circumstance; while for the single member of an assembly no such personal motive exists. He is therefore still more bound on ethic grounds to obey the law of justice, and his doing right is the more disinterested. Let, however, all citizens rest assured that, whatever the momentary disadvantage may appear to be, there is happily nothing which is even on the ground of mere prudence so advisable as steady justice and fairness in all matters. Nothing creates such confidence and imparts such vigor to all parts of the state as doing right. "Oh qu'il est dangereux de mal faire pour en espérer du bien," wrote Elizabeth to Henry IV. of France.[1] By nothing, it is well known, has the Prussian government succeeded sooner in attaching the new or reconquered provinces to herself than by her scrupulous fulfilment of even very onerous engagements made by the preceding and hostile governments. Credit, that great agent of governments as well as private transactions in modern times, and which, however frequently and greatly abused, must nevertheless be considered as one of the most striking effects of civilization in the European race, on what is it founded, if not on the two elements of capability and of justice? Pecuniary capability alone can never create it without corresponding confidence in the justice of the borrower.

Yet, though none of these considerations existed, justice has its own independent worth, and the most fundamental maxim of all politics as well as of civil liberty is the well-known adage, "Fiat justitia et pereat mundus." Aristides left a great national legacy to his fellow-citizens by his name of the Just, and by his opinion, repeated from mouth to mouth, when Themistocles, by their order, had communicated to him his secret plan of burning the confederate fleet, "that the enterprise which Themistocles proposed was indeed the most advantageous in the world, but at the same time very unjust;"[2] whereupon the Athenians commanded him to lay aside all thoughts of it. As justice is the great support of the state, so is injustice its ruin; not only corrupt administration of justice, but every act of undeserved partiality or favoritism, of honors bestowed unworthily or merits requited with evil, spreads in the state like a poisonous weed and extends its mischief incalculably farther than merely to the individual or his family.

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[1] Raumer, History of the Sixteenth and Seventeenth Centuries, illustrated by Original Documents, translated from the German, London, 1835, vol. i. p. 383. Not to be confounded with Raumer's History of Europe, likewise quoted in this work.

[2] Plutarch, Themistocles.

Justice, thus vitally important in all domestic political affairs, is not less so in international. Treaties rest essentially on good faith; for there is no superior power to adjudge between the parties and to coerce into obedience. As international treaties generally cover a large sphere, it is natural that human words should, in most cases, be found not sufficiently minute to exclude all faithless interpretation. There is then no authority which can direct us to do right, except Justice herself in our hearts; while we may confidently rely upon the fact that nothing gives so much dignity to a nation, and consequently so much facilitates all her national intercourse, secures so great national advantages, and extends benefit to all her citizens abroad, for whatever purpose they may travel, in pursuit of wealth, knowledge, or pleasure, as habitual and traditional justice in international affairs. The international transactions of Louis XIV. and the deplorable effects to which the spirit led with which they were carried on, afford an impressive instance of bad faith and injustice; the history of Isabella the Catholic furnishes a striking instance of the becalming and resuscitating power of habitual justice and consequent confidence of the people; and that of England, the most instructive illustration of the immense power which results from a faithful discharge of the engagements made by government, and a universal belief in the justice of the courts of law.

IX. Justice, which demands that we should see and judge matters not only from our point of view, but also from that of others, perhaps of our adversaries or enemies, is on this ground also the most difficult virtue, as it is the highest. No phenomenon in the moral world, or indeed in the political, is more common than the adoption of the standard of that circle in which we move, a specific standard of feeling, taste, delicacy, tenderness, even of fairness, justice, or candor, honor, and right, and a disregard of that of others. But justice on general grounds, as well as in political spheres in particular, demands that we should divest ourselves as much as possible of these distorting views, which must prevent us from free and correct action. There is nothing so dangerous in politics as *coteries*, on account of this standard of their own, and their consequent injustice to others. The history of most revolutions proves their danger. There is hardly ever a body of men within a nation who know so little of it as a court, unless the monarch be of a peculiarly sagacious and penetrating or free and elevated mind, gifted with the rare power of a grasping combination and the genius of divination, animated as this must be by original sympathy with the people. Parties, and especially party coteries, have frequently the same effect.

X. Nothing, however, is so apt to prevent justice in us as passion, which is proverbially blind. As to party passion, I shall recur to the subject when I shall treat of Parties. Here may be mentioned only that there are many persons "who have no action except they are animated by some passion, which makes them like incense, giving its perfume only when on fire," a "constitution dangerous to all persons, but especially to kings, who, as well as every one else, must act by reason," as Richelieu adds in his testament. These persons are highly dangerous in free countries, because they act not only blindly, and "if correctly but by chance" and by mere impulses, which rapidly vanish; but they communicate their excitement to others, and prevent truth and justice in a larger circle. Yet these unbridled and unmanly characters are not the only ones who suffer from passion; nobler men have to shun it likewise. A large number of those men who have performed the greatest works have done so partly in consequence of having been endowed with a peculiarly sensitive and excitable organization. Without it, men are frequently incapable of that impulse and enthusiasm which must rouse the mind and inspire it for great and morally bold tasks; without it they will not dare or undertake those things which promise neither reward nor profit, and to which strict duty does not bind them. But this very sensitiveness likewise exposes such characters to excited feelings more than the duller part of the community, and consequently, when excited, to unjust and dangerous actions. Let them therefore learn in season to bridle themselves and submit to calm judgment, without extinguishing the ardor of their nature; for they are necessary ingredients in a good community.

In whatever light, then, we may view justice, privately, publicly, or internationally, it is all-important. It is the foundation of character, the basis of power, the ægis of liberty, the sole support of self-respect; and a great secret of the art of ruling, which many indeed believed to consist in a continued series of *coups d'état*, is contained, for republics as well as for monarchies, at home and abroad, in the two brief words, Be Just.

XI. That we should be just in its truest and widest sense, in all our dealings, opinions, and judgments, strictly political or not, leads us at once to the consideration of an important question: Is a citizen in conscience allowed to do all that his laws permit? Not a few think so, although in many cases the theory of the persons is worse than their actions really prove them to be. That we have not to inquire whether a citizen may or may not take all the advantage which, in overreaching the laws by using their letter contrary to their evident spirit, he may derive from cunning or fraud, is too evident. The fair and simple question is, May you do all the laws positively allow you to do, and all that they do not prohibit? What has been called by some abiding by the laws of their country is nothing but a pretext for actions of whose depravity they are conscious. From the whole view which has been taken of the state in previous chapters, it appears clearly that those who pretend to consider themselves justified in everything which the law does not prohibit are in a great error.[1] The state does not supersede morality or my own conscience, which it evidently would if its laws were my whole code. We must never forget that laws are always addressed to men whose common sense and moral character are presupposed: otherwise it would be impossible to draw up any laws, and useless to enact them. The more legitimate the action of the state, the more it confines itself to those subjects which necessarily require general interference or action, and the more it leaves individual action to itself. There are thousands of relations of the highest importance which the state nevertheless cannot or will not touch, in which we must act for ourselves. The state remains, as has so frequently been stated, a jural society; but there are even jural relations which it is impossible for the state, acting as it does by laws, that is, general rules, to treat with that minuteness or delicacy which nevertheless their essential character requires. We have seen that the individual is by no means absorbed by the state; it does not pretend to act, feel, think for us; but this would undoubtedly be the case if we attached a moral meaning to our actions only according to the positive laws of the state. If I am absolutely allowed to do all that the laws of my country allow, and I thus make the state my conscience, a necessary corollary is that I am also absolutely bound to do all that they demand. How then with nefarious laws? Walter Scott tells us that an earl Patrick on the Zetland Islands made laws against anybody's helping vessels likely to be wrecked on the breakers, for no other reason than that iniquitous desire which we find to a very late period in most inhabitants of remote and dangerous coasts.[1] The Austrian government permitted to a recent date the reprint of any German work although unauthorized by the author or owner. Thus piratical cheap editions were imported from the imperial dominions into the other parts of Germany, to the injury, and sometimes the ruin, of the lawful owners of the respective works. Was it right to make use of this law of Austria? Charles Gustavus of Sweden, when he was in a highly critical situation in Poland, in the year 1656, ordered that every Polish nobleman of his party who should kill one on the Polish side should have half of his fortune; every peasant who should do the same should be emancipated and have the use of the slain nobleman's estate for six years. Was an individual, even though he sided conscientiously with the monarch, therefore at liberty to commit murder?

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[1] * The error, then, is:

1. That we do not acknowledge that there may be bad and even wicked laws.

2. That we reason as if the state with its laws were made to be a *substitute* for conscience and morality, while in truth it is but one of the edifices built upon them.

Now let a man adopt the rule that he is permitted to do all that the laws do not prohibit, and then add Blackstone's theory that the punishment is an equivalent for the offence, which therefore we may commit provided we are willing to abide the consequences, and it is seen at once that we arrive at this conclusion:

You can do anything you choose, provided you can prevent it from being discovered, or, if it be discovered, take the consequences—a diabolical rule, fit for a set of pirates, but not for honest men.

There is no father who would assert that he feels at liberty to do in his family all that the laws allow or cannot reach; and why is the moral obligation in the family greater than that towards fellow-citizens? Most assuredly God will not judge men by the civil code, or the common law of England, or the code of France, but by that code from which all codes originally flow, and which is "the law written in their hearts," their conscience. If this first of all codes is disregarded, its emanations, the positive laws, must in every society soon lose their efficacy. If we are allowed to do all the positive law permits, one or the other thing must necessarily follow: either the laws continue to touch comparatively few relations and things, in which case lawlessness must be the consequence; or the positive laws embrace all relations, interfere with everything, and abject servility must be the consequence.

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[1] The Pirate.—Until within recent times "a blessed stranding" was prayed for in some churches on the island of Rügen in the Baltic. The people compared it to the innocent prayer for "daily bread" of a physician, and interpreted their own prayer as a request that, if there was any wreck according to the will of God, much of it might be saved and come into their hands. Nothing, I believe, proves more strikingly how society alone humanizes man than the fact that in all countries, among inhabitants of the sea-coast, remote from society and near rocks and breakers, are found exceedingly dangerous people, who decoy vessels or destroy the crew, etc., and the remark which Thucydides makes respecting them applies to many countries in our own times. The discovery of the so-called "land-pirates" on the New Jersey shore, a few years ago, and their crime of enticing vessels by false lights, are in the remembrance of every one.

In countries in which the law is habitually and traditionally considered as the supreme ruler, without which, as we have seen, no civil liberty can exist, the citizens are not unfrequently exposed by their very reverence for the law to extend this positive rule too far, which nevertheless according to the very essence of the state applies to outward actions only, and to forget that there remain many actions even of political importance which cannot be judged of by laws. Thus it is found sometimes that the mere verdict of not guilty influences persons who judge of the individual in question, as if a verdict in court were meant to be an absolute or moral one. We all know that there is a difference between an honorable acquittal and one produced only by rules of law, which are nevertheless necessary and protective and which may leave an indelible stamp of guilt upon the acquitted person. Burr was acquitted, but few believed him innocent. That justice in its true sense, on the other hand, forbids us to judge by mere suspicion and appearance, is evident. Pretending to regulate all our actions by the law only shows a supposition of perfection in the laws,—which they never can acquire, partly because they are the work of man, partly because they are gradually and not in all parts evenly developed—and a resolution to exclude from our actions all those noble principles which cannot be demanded, and from which nevertheless the purest actions proceed.

CHAPTER II.

Perseverance.—Justus et tenax.—Necessity and great Effects of Perseverance—To persevere, our Purpose ought to be good, the Means adapted to the Purpose and the Purpose to the Means; the Means concentrated.—Repeated Action may supply Power; undaunted Perseverance may finally decide by a Trifle.—Fortitude.—Alarmists.—Excitement and Injustice.—Rabies civica.—Calmness of Soul.—Political Fretfulness.—Great Souls are calm.—Peevishness.—Political Grumblers (Frondeurs).—Chief Points respecting Firmness.—Consistency.—Inconsistency.—Obstinacy.

XII. The graceful spirit of the Greeks attributed even to the serious historian the dedication of each part of his work to one of the muses. If I could have graced the divisions of this book with the names of great and good men, in whose contemplation the mind gathers strength and reassurance, I should have inscribed this division, in which I purpose to treat of Perseverance, with the name of Columbus. Ponder his life, weigh his motives, examine his strength of mind and tenacity of purpose, unsubdued by sneer, haughtiness or clamor, disappointment or difficulty, unshaken by storm, rebellion, treachery, or ingratitude; strong from his first obscure setting out in his great career, in the hours of peril, in command or chains, in wealth and in poverty, to the last moment of his illustrious life: and you will have a better commentary, and a real and more inspiring example, than any abstract words can give, of those impressive lines in which the ancient poet has embodied the two substantial virtues of every citizen and of every man who means to do what is right and not to leave this life without bequeathing some good performed upon his fellow-men:

"Justum et tenacem propositi virum
Non civium ardor prava jubentium,
Non vultus instantis tyranni
Mente quatit solida, neque Auster

> "Dux inquieti turbidus Adriæ,
> Nec fulminantis magna Jovis manus:
> Sic fractus illabatur orbis,
> Impavidum ferient ruinæ;"[1]—

words which have been hallowed since the brave Cornelius de Witt breathed them on the rack, and expressed his firmness against an impassioned prince and an infuriated populace, who would not be appeased but by the pure blood of the patriotic hearts of him and his great brother John de Witt.[2]

XIII. Perseverance, firmness, fortitude, constancy, courage and calmness, manfulness, dignity of mind, self-esteem, and consistency, are each the same in principle, and only different terms applied to a different degree of intensity or different relations and circumstances, or they stand to each other in the relation of principle and application, or, lastly, they are very nearly akin to one another, and one can hardly be imagined to exist without the other.

If we have made up our mind to be just, that is, to do what is right ("ex æquo et bono jus constat, quod ad veritatem et ad utilitatem communem videtur pertinere"),[3] we cannot adhere to our purpose without perseverance. Every purpose and object in life, through all spheres of action, require their proportionate degree of perseverance: the tillage of the ground requires its degree of perseverance, in the same manner as the study of a science, the diffusion of a great truth or other benefit to mankind, the carrying of a great measure or the delivery of a country from foes, foreign or domestic, do in their respective spheres; and the greater the object is which we feel in conscience bound to obtain, the greater is likewise the effort necessary for its attainment. To break a road over the high Alps, or pave it through morasses, requires greater labor than the laying out of a path over even ground; and to shed the light of truth in ages of darkness calls for stronger minds and firmer souls than the application of well-established truths to some single case. This no one ever denied; yet in practice we are apt to forget it. Difficulties, derision, clamor, defeats, or the despair of receiving due acknowledgment, are apt to dishearten sometimes the best and wisest. Yet had not Lady Montagu or Jenner persevered, the one in introducing inoculation, the other in proving the benefit of vaccination, despite all lampoons, derision, and the outcry of fanaticism against them, men would to this day, perhaps, be subject to one of the most malignant diseases. Had not Frederic the Great of Prussia persevered in promoting the cultivation of the potato against a riotous opposition in several parts of his dominions, many individuals would have suffered famine in later times. They trusted to the truth or justice of their cause, and that, as Napoleon expressed it, "public opinion would come round again."

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[1] Horace, Carm., lib. iii. 3.

[2] This stern page of history contains one of those periods in the annals of mankind which deserve the manly and serious consideration of every true lover of his kind. Nowhere, perhaps, are the fearful power of ill-founded and senseless rumor, the exasperation of the multitude even against the wisest and most unsullied patriots, and the fortitude of the just patriot, exemplified in a bolder instance than in this case. History has done ample justice to the characters and great statesmanship of the brothers John and Cornelius de Witt, and the verdict of not guilty has long been pronounced by posterity, despite the nefarious attempts of some writers. The best sources respecting the murder of these patriots are to be found in Van Campen, History of the Netherlands, Hamburg, 1833 (in Heeren and Uckert's series in German), vol. ii. p. 247.

[3] Ad Herenn.

But let us ask here, at once, is this return of public opinion, this acknowledgment of truth, a comfort to which man may look forward as an unfailing reward, which in the end cannot escape him? It is undoubtedly and happily true that respecting public measures, in far the greater number of cases, the gradual acknowledgment of truth and justice will supersede passionate excitement and infatuation, and, still more, a man or a measure will gather additional strength from such a return of public opinion, after having been deprived of it for a period. A citizen never wields greater power than when he has firmly stood the trial, unmoved and calm, and when public opinion returns to him, not he to it. Yet it is equally true that your life may pass in darkness, the best intentions may be misunderstood or reviled, and what is not true may by repetition acquire the appearance of substantiated fact. A man may tell the truth like Marco Polo, and yet, like him, be decried as a liar to his grave; century after century may hold him up as an impostor, until after the lapse of ages his strict veracity may at length be firmly established.[1] We ought not to deceive ourselves: appearances may in some cases be so strong against us, and by accident or whatever other cause evidence to the contrary may be so totally destroyed, that the truth can never be known. A bitter fate indeed. And what then? Then, indeed, nothing is left except what is still the last and highest support, that derived from Him who is the inspiring motive of all noble and heroic actions. Your conscience remains; and even a heathen said, "Justice and honesty are truly commendable in their own nature."

XIV. That the citizen be honestly and firmly persevering, requires that his purpose be good and his cause just; that he adapt his means to his purpose, and his purpose to his means; that he concentrate his means for the one great object in view; that he be ever mindful that repeated and uninterrupted action may compensate for the absence of great power; and that in cases of the greatest trial, when the struggle comes at the last between nearly balanced powers, a trifle must decide.

The first of these positions is clear; for perseverance is power, and may be and has frequently been employed in the service of wicked ends. The second is, perhaps, equally clear; yet a forgetfulness of this rule has disheartened many well-intentioned men, while in other cases presumptuous men have frittered away their talents and gifts, which otherwise might have been employed to excellent purposes, and they themselves have ended with a disappointed temper which is ever apt to betray men into acts of injustice, or entangle them even in nefarious designs projected by men more prudent and less principled. We have seen in several previous passages that without a degree of enthusiasm, and inspired love of the Good, men are in want of a principal inducement to be good; utility alone is insufficient to guide or support us. This enthusiasm, however, must be balanced by modesty, which will teach us that we should not assume our opinion as the sole guide, and that we must temper our desires and endeavors according to the different spheres of action in which it has pleased a higher hand to place us. Not a few have injured the best causes because their ambition went beyond their talent and they would not suffer the first place to be occupied by an abler man; or because they strove for objects wholly unattainable. The canvas which a vessel carries must be in proportion to the hull and cargo. A distinguished man, who was more variously endowed than most men, and most active throughout his life, one of the master-men of his age, Leonardo da Vinci, took the sentence of Terence, "If that cannot be which thou wilt, will that which can be,"[1] for the motto of his life. He went farther, and says, "Wise is he that guides his will by that which he cannot perform."[2]

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[1] Marco Polo, when on returning from the East he gave an account of his father's and his own travels, was totally disbelieved, proverbially called a liar, and mentioned by his fellow-citizens by nicknames only, which expressed their contempt. The various late embassies to China, however, and the accounts of those who have personal knowledge of it, confirm in a surprising manner Polo's veracity. See, among other works, Davis, The Chinese.

The third principle—to concentrate our strength upon one great object—is equally important; for a man cannot fight two battles at one time, and it is true in the moral world, as in the physical, that a force effects most in a straight line, and loses the more obliquely it is applied. Singleness of purpose lends great strength. The clear perception of what we want, and in what way we ought to direct our endeavors, increases with it. And, again, in order to obtain singleness of purpose it is important that we should clearly present to ourselves what it is we essentially strive for. No man takes good aim at an object enveloped in dimness. Timur, who will be allowed to have effected mighty things, enumerates among the twelve maxims, which he had laid down for himself and advises his successors to follow, this as the eighth: "I acted with resolution; and on whatever undertaking I resolved, I made that undertaking the only object of my attention; and I withdrew not my hand from that enterprise until I had brought it to a conclusion."[1] "Quidquid vult valde vult," said Julius Cæsar of Brutus.[2]

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[1] "Quando non potest id fieri quod vis, id velis quod possit." Andria, ii. 1, 5.

[2] A sonnet of Leonardo's begins,—

> "Chi non può quel che vuol quel che può voglia,
> Che quel che non si può folle è volere:
> Adunque saggio è l'huomo da tenere
> Che da quel che non può suo voler toglia."

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[1] The Institutes of Timour, translated by Major Davy, Oxon., 1789, p. 157.

In Fraser's Persia, vol. xv. of the Edinburgh Cabinet Library, p. 229, the following anecdote is related of Timur, but I am unable to find it in the above translation of the Institutes, or the previously-quoted translation of his own Memoirs.

"I once," says Timur himself, in his Institutes, "was forced to take shelter from my enemies in a ruined building, where I sat alone for many hours. To divert my mind from my hopeless condition, I fixed my observation upon an *ant*, that was carrying a grain of corn larger than itself up a high wall. I numbered the efforts it made to accomplish this object: the grain fell sixty-nine times to the ground, but the insect persevered, and the seventieth time it reached the top of the wall. The sight gave me courage at the moment, and I never forgot the lesson it conveyed." A similar incident inspired Robert Bruce, the restorer of the Scottish monarchy, with courage to persevere in his undertaking, mentioned, for instance, in Scott's Tales of a Grandfather. These accounts, true or not (and there is no reason why they should not be true, though there is none, either, why they may not be rather the expression of the views entertained of these personages in after-times), show, nevertheless, a sound moral in an impressive style, and in the whole sphere of practical morals it is salutary if we can compress a great truth into the narrow compass of one impressive image or fact, which in times of extremity, depression, or excitement, when the state of our mind is unfit to reason, presents itself to our soul like a symbol of this truth, and is apt to remind us suddenly of the result of our reflections in calmer hours. Anecdotes of this sort, therefore, are well worth remembering; but whether we endeavor to impress our mind with a summing up of this great virtue in the moral of plain yet pointed fable, or an anecdote, or the name of a man who has practised it well—a Fulton, Isaac Newton, or Coligny—it is all-important to stamp this virtue deeply on the mind in earliest years.

[2] As Cicero mentions, ad Att., xiv. 1, 2.

Fourthly, repeated and uninterrupted action may compensate for the absence of power. The ancients said proverbially, "Gutta cavat lapidem non vi sed sæpe cadendo." And, likewise, firm perseverance may effect much with small means. They were but crazy vessels in which Columbus discovered the New World and Ross sought to reach the north pole. It is the natural course of things that few great objects are brought about at once; radical changes never. The ideas, of which the ultimate changes are but the manifestations, must make their way from within outward, from below upward; and for this it is necessary both that a beginning, however insignificant, be made, and, if once made, that it be followed up by steady action. As Demosthenes was laughed at when he first spoke, but by perseverance became the greatest orator, so there are few great ideas which have wrought extensive changes that were not at first disregarded, perhaps derided or persecuted. This first beginning requires courage; but it is one of the noblest kinds of courage. It was necessary that Beccaria or some one, whoever he might have been, should make a beginning in showing the inexpediency and cruelty of most penal systems, before ultimately the great reform of punishments could take place which we happily see realized in our times; Salmasius or Filmer must first boldly write against witch trials, before the truth could be widely acknowledged, and positive legislation finally set its seal upon it under the dictates of public opinion. The habeas corpus act passed in 1679, after having been passed by the commons in 1669–70, 73–74, 75–76, and rejected by the lords. How long was it that Soto,[1] the confessor of Charles V., wrote against the trade in Africans, before Virginia prohibited it in 1778, the United States provided for its abolition in the constitution of 1787, and England followed the movement in 1807,[2] after a parliamentary struggle of twenty years? Of whatever party the reader may be, he will agree that the emancipation of the Catholics is greatly owing to Mr. O'Connell's perseverance, not to the power or influence which he originally possessed, either by riches or rank, but which he acquired by near thirty years' unabated exertion. This he himself calls in one of his speeches the great secret of his power. Whether he wields this power at present for the weal or woe of Ireland, this is not the place to inquire; all we have to consider is his immense influence, and that he acquired it by singleness of purpose and unremitted perseverance, which must frequently have been seconded by circumstances,—in which case it proves indeed the value of perseverance,—but must also frequently have found obstacles in them. Those who ascribe O'Connell's power to the mere lawless spirit of a demagogue and servile followers, take an erroneous view of history. It is his perseverance, in union with his talent, applied to the peculiar circumstances offered by his country, which gives him this uncommon power of "a shape and magnitude such as history never yet beheld."[1] Sir Samuel Romilly, after having repeatedly reflected upon the melancholy state of the British penal law, and having regretted that he allowed himself to be dissuaded from proposing his bill, because it would have made a beginning by drawing attention to the subject and causing discussion, brought in his bill against the statute of Elizabeth, making privately stealing over five shillings capital, June 15, 1808; and Sir Robert Peel's law taking away death for so many offences only passed in the year 1827. Nor has to this day the state of jails been thoroughly reformed: the years 1860, 1870, 1880, nay 1900, may very easily arrive before that be effected; and yet if within one hundred years this be effected, it will be after all but a short time, con-

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[1] Soto de Justitia et Jure.—See Mackintosh, General View of the Progress of Ethical Philosophy, section iii.

[2] The American laws of March 22, 1794, April 7, 1798, February 28, 1803, March 2, 1807, March 3, 1819, and some others, have reference to this subject,

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and make negro-trading from Africa piracy. There exists a very complete work on the history of the negro trade and the long struggle to abolish it, by Albert Hüne: Complete History of all the Changes of the Trade in Negroes from its Origin to its Entire Abolition, Göttingen, 1820, 2 vols.

[1] Raumer, England in 1835, translated from the German,—Letter VI.

sidering the many centuries during which the bad laws and erroneous principles had time to grow like reeds in the rank soil of passion.

Fifthly and lastly, a trifle decides in struggles between nearly even powers, and therefore in the hardest struggles; but to reduce the struggle to this ultimate apparent trifle requires the utmost perseverance and fortitude. An adage says a feather may break a camel's back, but it requires all the previous heavy load to enable a feather to exercise such a power. The holding out of a fortress but one day longer may change the aspect of a whole war, may rescue a country, decide a victory; but that this one day, this one last effort, can be so decisive, it is necessary that the besieged should have been proof against all misery and sufferance. However gloomy the horizon in politics or war may be, however oppressed a good citizen may feel, this one fact is certain, hopeless despair makes it still worse. It is in times of calamity that perseverance rises to fortitude and shows man's moral power in the noblest light. If the best cause is oppressed, fret not, but wait for the due season, and prepare thyself patiently and perseveringly for it. Fabius and Washington despaired not, however dark and lowering the clouds were often around them. It is in times of war that frequently all depends upon this fortitude. A defeat, without this quality in the commander or the men, may be irreparable; but unbroken fortitude may turn a defeat even to a greater loss to the enemy than to ourselves, if we fight for our country and he for a cause which does not furnish him with this inexhaustible moral source. Had Londonderry not held out so perseveringly in 1689, William's conquest of Ireland could by no means have been so rapid; nor could his great ancestor, William the Silent, have wrested the Netherlands from Spanish tyranny and fanaticism, with all his own fortitude and elevation of mind, had not the citizens shown almost superhuman perseverance, when many months besieged in Leyden, reduced to the utmost misery, so that when at length the hour of delivery arrived they appeared "rather like barely breathing skeletons than living beings." Palafox, and the memorable defence of Saragossa, ought not to be forgotten here.[1]

XV. Single instances of fortitude have indeed produced great effects, upon those who were witnesses as well as upon after-generations. In a war between the Dutch and English, the factory of Jacatra, on the island of Java, was besieged by the natives by land and by the English by sea. The commander's name was Broek. After some parleys, the besieging sultan induced the Dutch commander to come into his camp, in order to settle further some points. Broek went, but was put in chains. He was ill treated and led with a rope round his neck to the walls, that he might call upon his countrymen to surrender if they would save him from execution. Broek, thus placed before his countrymen, entreated them not to betray their duty, and to hold out, whatever should become of him. It is easy to imagine what the effect of his heroism was.

Yet it is necessary that all be firm, if there is anything great to be attained, for without firmness there is no unity, and without unity no effect can be produced, neither in peace nor in war. For "of men who feel their honor at stake in battle more survive than die."[2]

There are in all communities people of a naturally gloomy and desponding disposition:[3] if they are roused by alarm, or if originally they unite to a want of firmness of nerve and mind a fretful forwardness, a combination of character which constitutes the alarmist, they become very dangerous; for on the one hand their excitement does not allow them to seize upon those means which are left, but which calmness only can discern; on the other hand they destroy order and concert, magnify the evil by mutual repetition, and intimidate the wavering; while it is they likewise who see a ground for suspicion in every accidental occurrence. Most people who have been shipwrecked are well acquainted with the true and dangerous character of alarmists, and their helplessness at those moments which require the greatest effort. As citizens they are not less mischievous in creating and spreading panics. . These unfortunate men see in every public misfortune a crime, and commit in their excitement those acts of injustice or cruelty on suspicion of bribery or treason, of which history relates so many melancholy instances. No man ought to allow himself to be frightened out of his wits by disasters and to wreak them on the head of the unfortunate, as the Athenians visited the loss of victory on their generals.

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[1] Napier, History of the Peninsular War, book v.; also Southey, History of the Peninsular War.

[2] Iliad, 15, 563.

[3] It is in peculiar situations that men show their character in native simplicity. I have met with no instance which exhibits the eager and the desponding characters so strikingly as in Captain Ross's Polar Voyage in 1829–1833; yet they are no more strongly distinguished than we should find in every society, could we but penetrate it. When he and his crew were frozen up, yet hoped still for some breeze which might liberate them, the navigator says, "Every hand was held up to feel if a wind was coming, every cloud or fog-bank watched, and all prophesied according to their hopes or fears, till they were fairly driven off the deck by the necessity of turning in to sleep. Had we been less anxious ourselves, we might have been more amused by observing how the characters of the men in-

The repetition of the same thing gives it to the senses of every one the appearance of probability; yet many of the most exciting rumors are founded upon nothing more than that every one repeats it to every one. It does not become either truer or less true by this process: all depends upon the first source. It cannot be too early inculcated as a rule for all periods of life, for man or woman, Ask invariably, but most especially in cases of universal rumor, for the first source. Who said it? Who saw it? Who brought the

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fluenced their conduct on this occasion Those of an eager disposition were continually watching the eastern sky, to discover, in the changes of the clouds or whatever else might occur, the first promise of a fair wind; while the desponding characters occupied the bow, looking in gloomy silence at the dark sea and the sky before them, and marking even without a word their despair of our ultimate success, and their fears that our voyage was about to come to an end at even this early day."

news? Whence does he know it? And this alone will be found to be an antidote against many rumors, which lead from surmise to suspicion, from suspicion to charge and accusation, and may end with a sentence against an absent citizen, as in the case of Alcibiades when he had sailed for Sicily, and was suspected, upon increasing rumor, to have defaced the statues of Hermes shortly before he had set sail. Rumors may destroy credit, involve hundreds in ruin, seriously injure their reputation, and, as has but too frequently happened in several countries, in our own as in past times, may end in murder. Few pages of history furnish so striking an illustration of the evil and often awful effects which alarmists may produce, and which are engendered by suspicion, alarm, and irritation at misfortune, of cruelty in consequence of want of manful calmness, and a total misunderstanding of one another, as those relating to the first French revolution. The first emigrants were alarmists; afterwards suspicion rose to such a height that the various parties, the Jacobins and Girondists for instance, charged each other with being sold to the foreign monarchs, after the head of Louis XVI. had fallen, and in some cases at least it seems that those who made the charge believed in it.[1] Therefore, be calm, and learn early to be so, by training your mind to analyze and dissect rumor, suspicion, imputation, and clamor, and you will save yourself many bitter reproaches, which otherwise you must heap upon yourself for acts of injustice, unfounded alarm, and folly, and will contribute to spare your community those excesses which have been most truly and pertinently called, by one who knew them by experience, Rabies civica and Furor civilis[1]—excesses the most injurious effects of which are not even the direct injury or cruelty which they may produce, but the lowering and degradation of the community at large, and the promotion of unfitness for civil liberty—the destruction of its sole basis, of justice.

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[1] We find these charges not only in the heat of debate, but in works written after the period of the greatest excitement had passed. In the Mémoires de Louvet de Couvray, Paris, 1823, 1 vol., Louvet, a zealous Girondist, charges Marat with having been in the pay of the allies, and Robespierre with having surrendered Toulon to the English, because he worked for the allies. All his violence was the consequence of a plan to make matters as soon as possible so bad that the extreme must lead again to royalty, a charge which we might understand if brought by one who could not find in the human soul another key to his enormities, but here is a Girondist who, it would seem, in good faith proffers this absurd charge.

Since masses or large numbers are peculiarly subject to panics, on account of repetition assuming the appearance of confirmation of truth, and the want of necessary means in most men to ascertain the precise truth, even if they are not inclined to yield to sudden rumor, it is a rule, though simple yet of the greatest practical importance, that, so soon as there exists a general rumor seriously affecting the community, or so soon as a panic has seized it, committees ought to be appointed, and, if general meetings cannot be held, that men of public spirit should appoint themselves as a committee to investigate the causes and correctness of the rumor and report to their fellow-citizens on the result of their inquiries. Those nations who are not well versed in the practical part of civil liberty have frequently felt the serious evils which ensue from a neglect of this simple rule; nor do those communities which have been longest accustomed to the practical operations and machinery of civil liberty always resort to it when it is most needed. Yet a committee is to masses what calm reflection is to every individual if he receives important news.

We may mention another reason which requires calmness. He who does not tutor his mind will fret under misfortune, and as individuals so at times whole communities are irritated, and consequently unfitted to act correctly, when a general misfortune befalls them. It is manful, and gives self-respect, to submit with resignation to evils which cannot be avoided, while calmness alone puts us in that frame of mind in which we may hope soonest to discover a remedy, should it offer itself in the course of events.

The same principles which determine many great national actions impel the mind on a smaller scale in limited spheres; and education, be it that by others or self-education, must early be directed to the cultivation of calmness. I once found a stage-coachman whipping his horses far more than seemed to be warranted by a fair desire of getting on rapidly. When I expressed my opinion against this cruelty, the coachman answered, "Ah, sir, if you knew how my teeth ache!" The same principle of action, and the glaring injustice of making some one smart, no matter whom or why, because we smart, may be found on many pages of history, in actions of vast extent and of calamitous consequences. Every true citizen ought to do his utmost, in times of danger, suffering, or political crime justly calling for public indignation, to calm all around him. In this consists true patriotism, not in pouring fresh oil into the already fearful conflagration.

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[1] Hor., Carm., iii. 24; iv. 15, 17.

XVI. In speaking thus of the low-spirited or desponding, it was not my intention to convey the idea that the light-hearted are the most courageous or the firmest when the hour of trial arrives, and the grave and more sombre natures those which soonest despair. On the contrary, those who have but little hope and are generally not sanguine in their expectations, yet withal are not of a desponding nature, will be found the bravest in times of peril and calamity, while those who form the most sanguine and extravagant expectations at the beginning are also those who soonest relax and perhaps despond. Aristotle goes so far as to maintain that great men are almost always of a nature originally melancholy. It is not necessary here to inquire what precise meaning we should give to the word melancholy, in order fully to agree with the first of philosophers: all we have to observe is that in politics, as in any other relation in which man may be placed, calmness of mind is all-important; without it we cannot be just, wise, manly, or effect great good; we cannot expect support from, or be the support of, others, and we make success a matter of chance rather than the reward of wisdom and rectitude. A ruffled temper, acrimony, passionate excitement, which leads to extravagant expectation or depression of spirits, are no more injurious in the private sphere than in politics; whether we consider the citizen in the primary relations of the state, or as representative, officer, or statesman proper. But calmness of mind is a quality which can, and therefore must, be cultivated, although it is true that some individuals are originally endowed with tempers which make it easier or more difficult to attain to this exalted virtue. Some of the greatest men, and those who have distinguished themselves most signally in this very particular, have, according to their own confession, not possessed it by nature. Washington—and can a greater example of calmness be cited?—is said to have naturally possessed an excitable temper. Socrates we know had often to struggle against passion, but he did it successfully. Reflect, on the other hand, on men so bountifully endowed as Alcibiades or Byron, and yet so wayward in their livee, brilliant like a meteor indeed, but not blessing by a regular course like the sun. This cultivation of calmness, however, as has been mentioned already, ought to begin early, so that by degrees and perseverance it become another and our truest nature.

XVII. I purpose to consider the absence of the calmness of soul in four effects chiefly, namely, fretfulness, discontent, inconsistency, and obstinacy, the counterfeit of perseverance.

The first, that is, fretfulness, has been briefly touched upon in a previous passage. It is a sure sign either of littleness of mind or distrust in the soundness and truth of our own endeavor and object, if an over-anxious desire is manifest of seeing everything we hold to be good realized at once, or if we stigmatize those who disagree with us. Cases of imminent danger, and measures which are to avert it or threaten to bring it on, are of course here excepted. A conflagration requires immediate help. Great souls, the *μεγαλόφυχοι* of the Greeks, who strive for the dissemination or establishment of some substantial good or truth, are not fretful; they trust; if they are thwarted they heal their grief, "for placable are the hearts of the noble,"[1] and do not relax on that account. They know that victory will ultimately be theirs, or on their side, even if they themselves should long have passed away. They trust in the truth of their principles and in the power of that truth; they feel convinced that if the principles are true they will assuredly make their way and be realized in practice. Great and calm souls look upon their God, who, when He created the rivers and the sea, knew that man would invent bridges, boats, and sails; who, when He called the earth into existence and placed man upon it, knew that the plough would be contrived in due time. Great and calm is his creation. While one tree is shattered by the lightning of the heavens, innumerable millions grow calmly and slowly; while one beast of prey pursues a weaker, myriads are born and unfold silently the great principle of life.

Discontent and peevishness are no less an effect of the absence of true calmness, perseverance, and greatness of soul. In all free countries, where there are consequently parties, a class of men will be found who, if defeated in a favorite measure, will retire in discontent and peevishness, treating the existing state of things with disdain, as if all wisdom and disinterested virtue were on their own side and none on the other, people who perhaps with a homely but appropriate name might be called political grumblers (*grondeurs* and *frondeurs*), and who cannot summon up sufficient resolution to consider a question as settled, be the evidence ever so strong. They frequently show by their own conduct that their sympathy was never truly with the people, and that therefore the withdrawal of support was not so ill founded. They ought to recollect, however, that whether their retirement be seriously felt at the moment or not, certain it is that soon they will be forgotten and society will learn to do without them. When Walpole saw he could not carry the excise bill, that, such as the combined circumstances were, the nation would not take it, he manfully abandoned it, not indeed his conviction that it would have been beneficial, but that, good or bad, the nation would not have it, and he left it to his adversaries themselves to acknowledge the soundness of his proposal, which Pitt, afterwards Lord Chatham, one of its most strenuous opposers, did not fail solemnly to do, in the commons, when Walpole rested in the grave. Retiring in peevishness may lead to various political evils; and the first which naturally presents itself to our mind is this, that if those who have gained the victory over you are really an ill-intentioned faction, without knowledge or principle, and whatever else you may charge them with, you only increase their power by your sullen withdrawal. If you are convinced of the truth of your cause, stick to the vessel of public welfare to the last, and show to the people that you really desire the good of the country, and not your own advancement, by that buoyancy and indomitableness of spirit which, whatever fate your cause may have met with, cannot be defeated, because it flows from faith in the correctness of your cause and will attain for you the esteem of all, your adversaries not excepted.

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[1] Iliad, 13, 115.

When, in the year 1739, the British tory opposition saw that for a long time to come there was little chance of success for them, and the convention between Spain and England was ratified by parliament, Sir William Wyndham, with a number of his party, seceded, as they called it, from parliament. The consequence was that Walpole, his opponent, went on the better for it, and the seceders soon regretted their ill-advised step.[1] I would not include in the number of peevish grum-

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[1] Memoirs of Sir Robert Walpole, London, 1816, vol. iv. chaps. 52 and 53. The reader cannot have misunderstood me so entirely as to find in my words a palliation for the conduct of ministers who cling more fondly to place than to principle, and belie the professions upon which they took office and received support, rather than part with the luxury of power. Having chosen Walpole as an illustration of the one, we may take Lord Townshend as an example of honorable and dignified retirement without peevishness, for the other, as it belongs to about the same time.

Brougham, in the life of Tierney, p. 147 of his Statesmen, vol. ii., says, "They [the whig opposition] had retired and seceded from their attendance in parliament upon the very grounds which should have chained them faster to their seats: namely, that the government was ruining the interests and trampling upon blers the honest Jacobites of the time, for there were certainly some, though probably few. Unbounded obedience, or, as we would now term it, legitimacy above the law, had for so long a time been preached by many of the highest prelates, ready to sacrifice their station to this ill-conceived principle of religion, that it is not difficult to imagine men who conscientiously believed that the Hanoverian race were usurpers, however few Englishmen there may be now who would maintain that Great Britain would have acted wiser or better if she had placed the Pretender on the throne. Those Jacobites are not to be judged on strictly political grounds, but on those of religion and conscience; nor would we call them discontents, but rather malcontents or disaffected. They turned their face from the whole establishment of government, as we find in antiquity the malcontents sometimes leaving their country rather than submit, and planting a new country.

Political peevishness, moreover, may lead, if it is more effectual and general than it has commonly the power to be, to political apathy, one of the worst political evils, of which more will be said hereafter. Finally, if it should become almost regular and constant, it would prevent one of the requisites of a free country and of peaceable government in it —a sound, lawful, temperate, yet active opposition, without which either liberty must vanish or open disaffection break forth. Sir Robert Peel, after having struggled to the best of his power against the reform bill—and why may we not believe that he was honest in doing so? for so essential measures will always be looked upon at the time from very different points of view—did not retire in peevishness after the defeat of his party; and when for a brief time he was called again to the helm, he declared that he considered the reform act as a thing settled and done which henceforth must be left untouched. Lord Wellington probably disapproves,

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the liberties of the country; and that the people were not sufficiently alive to the situation of their affairs." This happened in 1797. Brougham says further, on page 150, that this could never happen now, without throwing up the delegated trust.

as much as any tory, of the general spirit which dictates the acts of the present Melbourne administration; yet no citizen can be farther from mere political peevishness than the duke, as indeed might be expected of so manly a soul. I shall consider the important subject of Opposition more fully in a future part of the work.

Most true, indeed, were the words of the weeping Persian, who saw that his countrymen were engaged in a ruinous enterprise, and that of all whom he saw with himself under the command of Mardonius, few would be living after a short time: "The bitterest grief in the whole world is that when we have all wisdom we have no power;"[1] but he left not on that account his countrymen, he sneered not, disdained not.

XVIII. Political peevishness is connected with and of the same origin with irritability, a quality in the citizen which is highly injurious, and not unfrequently makes men deaf to the plainest dictates of patriotism, as in the case of Alcibiades, who, in consequence of the great injustice done to him, went to the enemies of his country. How noble appears, on the other hand, the conduct of Aristides, who, when ostracized by his fellow-citizens, did not go to the enemy to foment and direct a war against his own country, as Hippias had done, but on being restored from exile aided his chief political enemy in saving the state!

I believe the chief points respecting this subject, both ethical and prudential, may be summed up in the following:

You cannot expect those to love or support you whom you affect to disdain.

If you make up your mind to be a public man, which requires calm consideration, as we shall see anon, you must not be too sensitive to undeserved injuries or even insults, nor charge those that are offered in excited times by individuals, to the whole class or party to whom they belong, still less to your whole country. Impudence cannot be weakened more effectually than by calm disdain. Wellington was hooted at, threatened, and insulted during the reform excitement; yet he seems now to be the pride of all classes and all parties. Politics, because they are public matters, matters which affect the masses, cannot be otherwise at times than rough and coarse; those more tender relations which can grow out of personal and individual regard, mutual delicacy, affection, or friendship alone, or the more refined relations of purely mental communion, cannot, in very many cases, find a place in politics.

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[1] Herodotus, 9, 16.

Be sure that, however disappointed you may feel, nothing will more steadily aid you than readiness to serve the public in whatever place they may put you; and especially so in cases of great moment or danger. Antiquity shows many instances of citizens ready to serve in a subordinate position after having held high commands. But it is necessary at the same time to beware that neither your honor (your adherence to principles) be injured, nor that you appear as a courtier of the people, sedulously seeking favors at their hands. Few things disgust the people, if in a state of any moral health, more than obsequiousness; and a conscientious and honorable withdrawal generally finds its acknowledgment as soon as a peevish one finds its punishment. Sound popularity must be founded, and, like any other affection, first of all, on esteem.

Withdraw or secede when your presence appears to sanction crimes even in a degree. Yet even in this case extremities, although extremities only, may demand the contrary. Carnot abhorred the murderous procedures of the committee of public welfare of which he was a member. Yet he remained at his post because he considered the conquest of France by the allied powers as the greatest of all evils, and he was the only one who was able to direct the military movements. When, in their turn, the members of that committee fell under the axe of the guillotine, he alone was exempted.

XIX. Consistency of conduct is the agreement of one measure or step with our previous ones, or it is the existence of the same spirit through a variety of measures, their connection with one another as to motive and principle—in short, their *internal* connection. This meaning of consistency will be allowed upon reflection to be the only admissible one; for actions are like words: they may mean different things, according to the circumstances which call for them, and their essential truth and real meaning lie in their spirit, not in their appearance,—in short, in their motive and object. If we adhere to this meaning of the term, we shall be ready to judge with justice of the acts of others, both good and bad, and, for ourselves, not to shrink from actions which according to their outward form or appearance may seem to militate against previous ones of our life, as it will likewise naturally tend to make us continue in the right path, if we have originally chosen it with honesty and in justice.

Not a few citizens have been reviled on account of the appearance of their actions contradicting their avowed principles, and there are, probably, few cases which require greater courage and firmness in an upright citizen than those in which he conscientiously adheres to his principle yet does not seem to do so, and according to circumstances cannot expect that his true motive should at once be acknowledged, especially if those whose good opinion is dearest to him misunderstand him. Yet conscience and firmness may imperatively demand this. When Pope Pius V., the same who with sadness exclaimed that the being pope does not promote piety, was told that the inhabitants of Rome disliked him on many accounts, he answered, "The more they will deplore me when I am dead." It was an answer worthy of the greatest patriot.

In judging, therefore, of a man's character, we must follow the rule adopted by the historian, who does not judge by a single act, unless he has the most accurate and minute knowledge of it and it is one of those acts which incontrovertibly establish at once a good or a bad disposition; but he judges by the tenor of the whole life of his subject. In doing this we become just and cautious at the same time. A single act will not easily lead us to condemn a man in whom we have always found good reason to repose confidence, nor will it make us grant confidence without farther knowledge. In speaking of Earl Strafford, Forster remarks, with some justice, respecting Strafford's early professions of liberal principles and prominent co-operation in the Petition of Right, "He was consistent with himself throughout. I have always considered that much good wrath is thrown away upon what is usually called 'apostasy.' In the majority of cases, if the circumstances are thoroughly examined, it will be found that there has been 'no such thing.'"[1] We have to add only this, that many people deceive themselves; they really believe themselves liberal, while nevertheless their whole bias is such that, when the years of testing actions arrive, their characters appear of the opposite kind.

XX. Waiving the moral view of consistency and viewing it merely on prudential grounds, we find that the freer a people, and the more necessary for action and power, therefore, the confidence of the people becomes, the more indispensable is likewise consistency. In a despotic government power may be given from above to an individual who has shown great inconsistency, but the more popular a government is, the more, therefore, confidence is required, the more necessary also is consistency, by which chiefly this confidence is acquired. It is a very important matter for a citizen if his fellow-citizens can say, "We always know where to find him." It is not only so in politics; it is so in all branches. We trust an author in particulars if he has, for good reasons, acquired our general confidence. We do not believe Shakspeare to have been one of the greatest poets because he makes Romeo compare his lips to "two blushing pilgrims," transporting as that sonnet is; but we know it from this and many other passages and great conceptions, from the whole tenor of his works, and confide in his genius even though we should find a passage or two undeniably unpoetical. We do not believe

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[1] Forster, British Statesmen, vol. ii. p. 228, forming part of Lardner's Cabinet Cyclopædia.

Frederic the Great to have been a wise monarch because he drained the marshes of the Ukermark, but this and a thousand other things throughout his life indicate the genius of a great ruler. A single speech, however strong or to the point, did not make Pitt a statesman, but a series of actions acquired for him the support of the large majority.

Consistency thus gives power by its support of confidence; it gives power likewise by the even direction of a series of measures all directed to the same point, and is thus closely connected with perseverance.

It will appear evident from the meaning which we have attached to the word consistency, which is not to be judged of by the form or sign of the action, but by its spirit, that to be truly consistent the minor consideration must give way to the greater, and finally all considerations to the ultimate end of all government, the welfare of the people; so that a citizen may with perfect consistency and conscientiousness adopt, support, or defend a measure to-day which he strenuously opposed at an earlier period, if circumstances have essentially changed, not to speak of an improved insight into the subject. Lord Wellington and Sir Robert Peel long opposed Catholic emancipation; let us suppose both to have been honest in doing so; if so, they cannot be charged with inconsistency for having carried that measure in 1829, if the duke, then at the head of the administration, was equally honest in declaring on that occasion that he must choose between emancipation and civil war of the worst description.

This consideration is of especial importance regarding organic measures—measures which settle some of the elementary principles and features of government, if they once can be considered as fairly established and nationally acquiesced in. For it is not the duty of every citizen eternally to be at war with the society he lives in; on the contrary, it is his actual duty not to be so, except there are specific reasons. Nothing can be easier for a candid mind than to suppose some Frenchmen to believe in the honesty of their hearts that the elder line of the Bourbons is the only legitimate one, and that the throne of France is usurped so long as there does not sit one of that line upon it. Perverted as others may consider their judgment, they still will allow such a case to be quite possible. Yet though a peer may have these views, and although he may have expressed them even publicly and solemnly at the time of the last French revolution, he is not liable to the charge of inconsistency although he take his seat in the peers and join in all measures which he considers conducive to the public good and the peace and prosperity of his country. For, with all attachment to the former Bourbons, he may say, "Even they ought in my opinion to be placed on the throne only for the benefit of the country; this is the ultimate end of all government and of my principle of legitimacy. I cannot place them there; the nation seems at large and overwhelmingly to side with the younger Bourbons; the question as for my part is settled, at least for the present; let me then do what good I can."

Yet this principle, if not applied with conscience and firmness, degenerates into a political frivolity, which makes it easy for factions to seize the reins of government, because few resist with firmness the attempt and withhold their assent until it may be considered as fairly acquiesced in. Frequently repeated changes of government demoralize, as they frequently grow out of a previous demoralization. They unsettle the primary and solemn engagements of the citizen, and leave finally nothing but interest, selfishness, corruption, as the chief principles of action. They prevent the continuous development of society, institutions, literature, and public morality. The unhappy kingdom of Naples forms a melancholy example. Revolutions are at times not only necessary, but salutary, and it is often impossible to return to stability after a revolution, except through several intermediate changes. Yet it must ever be considered a most calamitous state of things if the indifferents and "turn-coats," or, as the French call them, "weathercocks," become the majority.[1] It belongs to the subject of revolution, that is, of open rupture with the established government, to consider when a citizen is allowed or even bound not only to disregard consistency, but even the oath (always in its nature a conditional one) which he has taken to support the government.

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[1] The French name for weathercock is *girouette*, used for turn-coat or trimmer,

It hardly need be said that a conscientious citizen must not allow himself to be prevented by false consistency from acknowledgment of error or change of opinion, but he ought in most cases to do it frankly, openly, for this is fair towards his fellow-citizens, and no mean test for his own conscience, and, like every noble action, invigorates the individual.

XXI. However true may be what Napoleon most pointedly said of the single step which is all the sublime requires to become ridiculous, the two border no closer on one another than fortitude or even heroism and useless or dangerous obstinacy; and unfortunately the latter is much more the counterfeit of its corresponding virtue than the ridiculous is of the sublime. Was it heroic fortitude, admirable firmness, or mad obstinacy that made Charles XII. of Sweden perform at Bender those daring acts of indomitable valor which no one can read without admiring the original firmness of his character, although it may be considered in that case daringly misapplied? But there is a dogged obstinacy in politics which is especially mischievous, because it is peculiar to narrow minds; a hard-headed mulishness, which cannot be overcome, because it is wanting in the necessary capacity to appreciate reasons and circumstances, and because all narrow minds are prone to mistake trifles for essentials, and will, if naturally endowed with courage, adhere immovably to them to the detriment of points of greater magnitude. The nobler, the freer, the more conscious a mind of its own native and in-

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though the last word does not express the whole and habitual turning about. A Dictionary of Weathercocks was published in Paris after the Restoration, in which the name of every prominent man since the first revolution is found with as many signs of a weathercock as the number of times he has changed his political creed; after which follows an account of the changes. There is bitter sportiveness in these sad hieroglyphics.

dependent vigor and comprehension, and the more thoroughly a heart feels its own elevated firmness and readiness, if necessary, to sacrifice everything, even life, the more tractable is also such a mind to the force of reason, the more pervious to truth. The horse is more tractable than the mule; the mule more so than the ass.

Obstinacy is a dangerous quality in every citizen, be he representative, counsellor, minister, or ruler, and proceeds frequently no less from a general heaviness of judgment than from a vain reliance solely on the shrewdness so peculiar to narrow and small minds (the μικρόψυχοι) placed in authority. James II. furnishes a remarkable instance of the ruinous obstinacy of contracted minds and hearts. A later instance is perhaps still more remarkable: I mean that afforded in the case of Charles X. of France and his minister Polignac, in their long train of infatuated measures, despite all signs and warnings of the times, and finally of the hour of revolution; when Charles, against the imploring entreaties of several counsellors and of all the members of his family, insisted upon his daring revolutionary measures with a will which would have been heroic had it proceeded from an elevated mind in a good cause and *for* his people, and at least respectable had he exposed himself to any danger and acted boldly instead of doggedly, but which appeared in its true light the very moment after the contest had been decided between the parties.

Obstinacy is not calmness of soul, but frequently originates from the opposite, from an excited state of mind. In whatever light, then, we may view it, justice and firmness—firmness which in continued exertion is perseverance; in the even spirit of our actions, consistency; in the hour of trial, fortitude—form the groundwork of political virtue; and we cannot aspire to them without calmness of soul, that essential concomitant of every good, elevated, and enduring action, which made William I. of Orange, the illustrious and incomparable deliverer of his country, adopt in that fearful struggle the motto, " Sævis tranquillus in undis."

CHAPTER III.

Moderation.—Excitement.—Passion.—Revenge.—Obscuration of Judgment by Excitement. — Honesty. —Veracity. — Kant's Opinion. — Honesty in Money Matters.—Desire of Wealth.—Love of Independence.—Poverty; its Effect on Public Men in ancient and in modern Times.—Necessity of being free from Debt. — Liberality. — Peculation. — Bane of Public Covetousness. — Public Defaulters.—Periods of Speculation.—Smuggling.

XXII. MODERATION or temperance, the keeping of the proper mean between extremes and the tempering of excitement or passion, is not so much a virtue in itself as a means to obtain it. Yet it is so important a one for the frail nature of man, and so difficult to become master of, so necessary to train ourselves in, that it may grow into a habit without which we are always exposed to commit many acts which will cause regret, that the ancients, and the school philosophers after them, had good reason for counting it as one of the cardinal virtues. It has already been stated that it is included in strict justice, and all that has been observed respecting calmness relates to the subject of moderation; yet so important is moderation in politics, because there are so many opportunities in all the political spheres for excitement and passion, that it will need no excuse if a few more remarks are added.

First of all it ought to be repeated that we cannot expect moderation to stand by us in the hour of trial, as a true friend, we cannot expect to listen to its counsel or that it should speak with a voice sufficiently loud to be heard when we are in a state of excitement, if we have not made it a habit of our life. Moderation cannot be acquired unless it be an honest, daily-repeated endeavor to temper our appetites and impulses. No rider expects a spirited horse to be broken by only once putting a bridle on it, or that it should submit to his guiding hand when frightened or excited, unless he have it well trained by repeated and judicious and patient management when there are no startling causes surrounding it. And as no habit can ever be so easily and thoroughly acquired as in youth, so as to become a second nature, it is necessary that we should train ourselves in this indispensable habit from our early years. We ought never to forget that our Maker, having deeply implanted appetites and impulses in our soul, so that they appear afterwards in their native vigor in each individual, because indispensable in the whole organization of the individual and household of society, likewise gives to each individual the faculty of reflection and reasoning, and, in order to let each individual have a moral value, leaves it likewise to each man to rule impulse by reflection. Without this we should be machines directed from without, not individual moral beings determined from within.

Secondly, we must remember that in politics we act in a great number of cases in union with others, who, therefore, necessarily excite one another by mutual action and reaction; frequently we act like the pilot, surrounded by stirring and swiftly-impelling agents or bewildering dangers; we are often called upon to give our unqualified vote immediately after the most exciting scenes, and in many cases we act while struggling with opponents or when we possess power, which in its nature is impatient of resistance. On this last point and the nature of power I have dwelt at some length elsewhere in this book. All these reasons, then, are very strong to induce us to train ourselves, and if the young are intrusted to our care as parents, guardians, or teachers, to train them in moderation; while mutual moderation is one of the choicest fruits of true friendship in our political life no less than in the whole career of man.

XXIII. There are two evils in particular which can be prevented by habitual moderation only, on the one of which some observations, indeed, have been offered already, which I will endeavor to complete now as far as the object of this work seems to require: I mean excitement and revenge.

Passion as much perverts our inner man as it hideously changes the outer, which Seneca very justly depicts at the beginning of his treatise De Ira. Judgment, justice, truth, not to speak of the more delicate yet no less necessary qualities of kindness, clemency, generosity, and other virtues, which flow from the noblest part of the soul, are wholly banished from the passionate at the moment of excitement, rage, or ire; and a man who has not acquired the habit of moderation is like a tiger; he may be calm, but it does not depend upon him whether he will remain so; a single drop of blood, which accident may show, suddenly calls forth his fury. It is true that some nations are much more prone to passion than others: climate, food, institutions, and national education exercise a powerful influence. Thus, the English, and it would seem still more so the Americans, are less prone to ebullitions of temper than the nations of the European continent, and again the Germans less so than the French and Spaniards; but all are men, all have the lurking fire within them, all stand in need of training, of being guided by the calmness and judgment of reason; especially so as regards not that passion which shows itself in sudden irruptions, but the excitement which gives us lasting oblique views and perverts our judgment and train of reasoning enduringly.

On various occasions I have spoken of the very simple yet very important fact that the nearer an object is to our eyes the larger it appears, and the less we are enabled to view it in all the proper relations of surrounding objects. All insulation magnifies. Now, if we are engaged in an arduous endeavor to bring about a certain object—I do not speak merely of what more properly may be called a political struggle, but of all measures and actions in which we are engaged with ardent intent of purpose—this intent is apt to magnify the subject to our eyes, we gradually lose sight of other considerations, and not unfrequently are betrayed even so far as to forget the ultimate object and to be ready to sacrifice everything to the means. Not only are warriors prone to forget that the end and object of all war must be peace; even physicians have at times forgotten the end of all their art, healing the sufferings or assuaging their pain, in the interest of a curious operation or the trial of a new remedy. The effect of this circumstance in politics is not only that parties forget, in their zeal, that parties can be defended only on the ground of the ultimate end of all politics, namely, the welfare of the whole, but also are very apt to consider each single case, in which they are thus zealously engaged, as a peculiar one, a crisis demanding therefore peculiar means, and allowing a stretch of power or the adoption of expedients which in other cases they would discountenance as inadmissible. When a late president of the United States changed the officers of government on a much larger scale than any of his predecessors had done, or than many citizens believed to be warrantable in a free government, where every one should be allowed to have his independent opinion and to express it in a lawful manner, the measure, allowed to be extraordinary though within the letter of the law, was excused in the senate of the United States on the ground that there had been a crisis. Future historians, untouched by the exciting circumstances of the time, seeing the objects in their true respective dimensions, will judge whether there was really a crisis, or whether it was only a state of things which presented itself as a crisis to those who had striven to place that president in the chair of the highest magistracy, and had become wrought up into an excitement which prevented calm judgment and clear vision.

There is no deviation from law, or right and justice, whether on a large scale, such as assuming power directly against the constitution of the land, or on a smaller scale, such as bribing at elections, which it is not attempted to justify on the ground of the urgency of the case for the public welfare—this public welfare, so truly the end of all government, and yet so frequently made the pretext of partial measures or the perversion of established law and the cause of justice. In South America the people unfortunately fly from one crisis to another; it was attempted to justify all extra-constitutional measures of the

Stuarts, all tonnage and ship-money was extorted by Charles I. against the law, on the score of necessity for the public welfare, of which it was for the king alone to judge. Charles X. of France in 1830 broke the constitution by declaring that one of its articles, which confided the watching over the public welfare to him, demanded those measures by which virtually the constitution was declared void.

XXIV. Excitement, as it obscures the judgment of parties and causes them to mistake their own advantage for that of the public welfare, is equally powerful in presenting to the leaders, or those who have great or supreme power, their personal interest as the general interest of the government or the people. There is hardly a life of a premier which does not exhibit such cases; and few will deny that Napoleon ended by almost completely measuring the interests of France by his own. That those who have great power concentrated in their hands, and especially, therefore, monarchs little restrained by law and endowed with great wisdom and energy sufficient to make all the possible use of this absence of restraint, are peculiarly liable to this distortion in viewing things and permutation of interest, is clear from the nature of things; but, as was already indicated when we treated of public power, every one who has power is equally liable to this great and mischievous error, and the people collectively not less so than individuals. Opposition irritates. Want of moderation, therefore, will always expose us to practise hasty redress or revenge, on a larger or smaller scale, and in a more or less violent spirit; for that excitement which first made us consider opposition to ourselves or our power, or perhaps only dissent from our views, as opposition to the good cause or the public welfare, is no less active in causing us to look on measures, which in the inscrutable depth of our soul have been generated by irritation and revenge, as necessary on the score of public good. Elizabeth, when consenting to punish with death or barbarous mutilation persons who had not even written against her power, but had only offended her by touching in the course of argument points disagreeable to her, for instance her age, thought in all probability that it was necessary; her general character seems to warrant it. Nevertheless, it was revenge cloaked in that abused term, public welfare. When Henry IV. of France, so wise in his public measures, resolved upon his last war, little doubt can remain that in doing so he was accelerated at least by his love for the princess Condé, whose husband had carried her to Brussels and would not yield to Henry's demands to return to France.[1] It is just to speak of these measures in candor and not to varnish them over because their authors were great princes; it is equally just to look around us and upon ourselves. Men in power allow revenge to present itself under a thousand different guises, and if it does not rise from within themselves it is sure to be introduced as an agreeable visitor by their dependants. Be therefore peculiarly careful in acting towards a man who has opposed you, and especially so if he has offended you. You cannot be too suspicious of the deep, unconscious and transforming processes and workings of your own heart. We see but too easily what we wish to see, and, under the garb of the advice or demands of others, receive with eagerness anything which corresponds to some hidden desire within some recess of our hearts. There are several beautiful examples not only of moderation and absence of revenge, but of conscious cultivated cautiousness lest there might be some secret working of offended power, in the life and letters of Washington as given by Mr. Sparks. On the other hand, let not the sad pages of history, on which the dark acts of revenge, whether monarchical or popular, individual or by masses, are recorded in letters of blood, be written in vain, but let us derive from them their proper lessons. Lastly, by moderation alone can we avoid that most fearful agent in politics—fanaticism.

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[1] Raumer's History of the Sixteenth and Seventeenth Centuries, illustrated by Original Documents, vol. i.

XXV. Honesty, or the acting in truthfulness, is of the last importance in politics, and—although it is enjoined in every moral code, by every religion which possesses any feature of morality, in every course of education, in short, although it is universally acknowledged as one of the primary ingredients of purity within and correctness of conduct towards others—deserves particular attention in a work on political ethics. That a man who acknowledges the binding obligation of the commandment, "Thou shalt not bear false witness against thy neighbor," is not allowed to tell falsehoods in politics, that field of action which depends more directly upon justice than any other, however pressing the case may appear at the moment and whatever advantage at the moment may deceive our eyes with brilliant colors, is too evident to be dwelt upon here. Yet we find great laxity as to the obligation of veracity in politics: wilful calumnies are propagated, fictitious facts boldly proclaimed, the reputation of men attacked in its very vitals, under the deceptive excuse of party warfare, as if the victory of a party was the ultimate object, and the prevalence of truth and the spirit of veracity not more important. The term "party warfare" itself is a revolting abuse of language, misleading many unwary persons, as all false terms or similes do in matters of importance. I find it difficult to write upon this subject; for while on the one hand all that can be said must be trite and is denied by no one, reality shows us that truth is to a frightful extent abandoned. Thousands and thousands go every Sunday to church and willingly admit everything which may be brought forth on the solemn obligation of truth, and yet are ready on Monday to asperse in public articles the character of a fellow-citizen knowingly with false accusations, or with charges which they know that they have not taken sufficient care to ascertain. What else can be urged against them except "You know you are wrong"? It might be shown indeed that even on merely prudential grounds they will act more wisely in adhering to truth; for truth gives power; truth is power; the word of a true man is listened to, and to him the people naturally turn for support: but their conduct shows that they believe that the obtaining of a momentary end is more important to them than the great cause of universally diffused veracity, honesty, or integrity, whatever name may be given to the same virtue viewed from different points. They should not, however, forget that the strength of a man or a party does not rest on a single act or success; it is a series of actions, the consecutive manifestations, in these acts, of the spirit which produces them, which can alone decide and alone acquire that confidence, upon which in free countries all power ultimately depends. To those who know that in acting as citizens, in whatever capacity this may be, private, semi-official, or official, they do not shift their primary moral obligation, and who mean to do right in politics as in the family or towards friends, in their profession or wherever else it may be, let it be repeated, though all know it, that God sees all and everything—a truth inculcated on the mind of the schoolboy, and of most mighty import to the highest statesman or ruler.

XXVI. Falsehoods are so generally condemned, and they recoil with so damning a power upon their utterer, that, as was alluded to, an experienced politician would abstain from them even were it but for the sake of prudence, well knowing as he does, too, that the freer a country the more likely it is that the truth of the matter will come to light some day or other. There is a sifting and searching power respecting this point in free countries, which outstrips all the espionage of the police. The politics of free countries places men continually in such different positions and so close to one another, that more will be brought to light by this natural operation of politics than the most skilful police could discover with its ramified exertions. As to the damning power of falsehoods, there is, I believe, no greater stigma upon the memory of George IV. than his base denial in parliament of his marriage with Mrs. Fitzherbert, through his adherents who were unconscious of the imposture.

Wherever men act jointly, especially in some compact body, whether they are incorporated or form a self-constituted society, or are held together by a common purpose and name, they are apt to show great readiness in denying facts which might dishonor or otherwise injure the reputation of their body; and men who would not be willing to state any wilful falsehood in their own behalf show themselves far less scrupulous in doing so if prompted by *esprit de corps*. The act apparently loses a degree of baseness because done for others. Religious or literary societies are not freer from yielding to this tempting sin either of wholly denying truth or distorting it, than political parties or writers who vindicate the honor of their country. Yet that remains true which St. Augustine found reason to state: "Falsehood is not to be tolerated under the veil of piety," and that "melius est, ut scandalum oriatur quam veritas relinquatur," better that scandal come than that truth be abandoned.

Veracity, the best moral preventive and preservative in private life, is all this in public. Be true, and thus alone you will have overcome a thousand dangers besetting the judgment, moral worth, strength of character, and power of reputation of a public man. Be true to others, to your life, to your soul, to yourself; be true to your time, to the principle on which you rose, which has supported you. Had Cromwell been but true, how many dangers would his great mind have escaped![1] In no sphere is essential veracity, that is, truth of thought, of word and action, which is infinitely more than mere absence of deceit, more important than in politics: "Quid est, quod afferre tantum utilitas ista, quæ dicitur, possit, quantum auferre, si boni viri nomen eripuerit, fidem justitiamque detraxerit?" By a diffused spirit of truth alone we avoid that loathsome and demoralizing agent, always busy among small and untrue men—I mean *cant*, be this religious cant, such as was frequent during the British civil wars; or philosophical and philanthropic, as during the French revolution; or theological, as in the Byzantine empire; or of loyalty, as under Louis XVIII.; or of liberty, as often met with in the most selfish parties in republics.

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[1] [For a vindication of Cromwell from this charge, see Carlyle's Heroes, lect. vi. p. 190, Amer. ed. He dissembled, but did not lie.]

XXVII. Still, the great question of veracity is not exhausted by the preceding remarks. We have to deal in politics, at times, with wicked, dangerous men, who would betray our most sacred interests, and against whom we must struggle in the honesty of our heart; or some of the dearest interests of our country may be intrusted to us and imperatively demand secrecy, for instance when we are ambassadors in delicate transactions; though even this is far less frequently the case than it was formerly imagined to be or was perhaps actually formerly the case, when politics were more cabinet politics than national politics. Now, it is very clear that we cannot be bound to answer anything which the querist has no right to ask. But this is not sufficient to solve our question; for no answer, or an evasive answer, amounts in many cases to a positive answer, because there may be but one alternative: if we do not avow the one, the querist will know that we avow the other. Have we in this case the right of denying the truth, arguing always under the supposition that the querist has no right to ask, or to force the truth out of us, or that the most important interests of others depend upon our secrecy and that the other has no right to expect truth at our hands? Suppose (and this case might easily take place) that secret preparations for a war of defence against an unlawful invader or a conqueror are going on in our country, and we are asked by one to whom we deny the right to ask, or the projecting invader himself, whether such preparations are going on. Or a constable, in disguise to catch a murderer, is asked by a person to whom it would be the height of folly to acknowledge his design, whether he is looking out for the pursued criminal. Or, as a great philosopher has put the question, if our friend flies to us for protection against murderous pursuers, we hide him, and they enter, asking, " Is your friend hidden here?"[1] It seems evident—though it was not so in the latter case to that philosopher—that we are not only at liberty, but bound, to deny; for otherwise those who have no right to ask and connect evil purposes with their question would have the supremacy over the honest part of the community, even though we might decline answering, because we give them the power of ascertaining the truth, which is the sole purpose of their asking. That they receive an evasive or wrong answer is solely their fault, as in cases of murderous attacks it is the assassin who has to accuse himself alone for the wounds which he may receive by the attacked person. To avoid being misunderstood on so important a point, I shall remark here only that society is kept together by communion, and communion consists in a very great degree of question and answer. Every man therefore has, I take it, a natural right to put any fair question, and every man the general duty to answer it in the spirit of veracity. There is no necessity of a specific right to put a question, but on the contrary there must be a specific reason which authorizes me to decline answering. I am bound by natural law, it seems to me, to answer, if I am asked whether this be the right road to such a place, and of course to answer in the spirit of veracity; for natural law teaches me that man is bound to live in society, and he therefore must depend upon others and others must depend upon him.

We arrive, then, at the following conclusions:

If the interrogator has no right to ask and connects evil designs with his questions, and if a mere refusal to answer would be tantamount to a direct answer, or would in no way remove impending danger, and most especially if the interests of others depend upon us, we have the right, and in many cases the duty, on the principles of justice and necessary defence of right against wickedness, to disappoint the querist, even by misleading him through our answers, as we would be bound to mislead a gang of criminals who, having seized us, command us to show them the way to a house which they intend to rob, or the inmates of which they mean to murder. Sir Walter Scott went much farther.[1]

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[1] Kant, in an Essay on the supposed Right of Lying on the Ground of Philanthropy, in vol. vii. of the Leipsic edition of 1838. Kant insists upon it that in this case, as in any other, we must say the truth, and betray our friend. Benjamin Constant is of the opposite opinion. [The author's cases are extreme ones, and the admission that a lie in extreme cases is justifiable is extremely dangerous, because the line cannot be drawn between such and others. Moreover, if you may lie, why not swear to it? why not take any means to procure credence?]

Secondly, if we are intrusted with an official secret, under oath of office, by a person who has a right to charge us with a secret, which involves that in doing so he must be in his lawful sphere, and the secret itself must be lawful, not wicked, selfish, or personal, and if we are asked respecting the secret by a person who has no right to ask or to expect an answer, if declining to answer would be tantamount to an answer, and if the importance of the secret warrants the exception, for instance that our country is for the moment destitute of means for defence, we are bound, as official persons, not to divulge the secret, either directly or indirectly. Otherwise ministers or ambassadors might at any moment be forced to betray transactions, the most essential and noblest, of their own country, to an evil-designing antagonist; and, as it would be the necessary consequence of all abandonment of self-defence that the wicked would rule over the honest and triumph over freedom, so it would be the effect in this case.

This is not using bad means for good purposes, or sanctioning the means by the purpose; for, as will presently be shown, the agreement of words with reality does not constitute in all cases that truth which is of eternal obligation, for instance in cases where that agreement is avowedly not expected, as is the case with the poet. Nor must it be forgotten that the above two remarks relate only to defence against evil design directed against us, and therefore lend no shadow of justification to equivocation or positive lying in diplomacy in order to injure others or benefit ourselves, not being thrown upon our necessary defence by the attacks of malignity. The age in which faithless observance of treaties solemnly sworn, diplomatic falsehood, and royal mendacity, had reached their highest state, may have been the age of Charles II. and Louis XIV.; those two paragons, the one of worthless, the other of ruinous and criminal kings. It is advisable, therefore, to review that period of history, in order to see to how criminal a degree all right, honor, and the barest justice may be abandoned, if the principle of veracity is once set aside in the intercourse among nations, or of governments with individuals.[1]

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[1] Speaking in his Autobiography of his having published the Waverley Novels anonymously, and the great curiosity in the public to know their author, he says that not unfrequently he was directly asked as to the supposed authorship, and that he must either have surrendered his secret, which no one had a right to insist upon knowing; or he must have equivocated, which might have exposed him to a suspicion of desiring to be considered the author, without being so; or he must have stoutly denied the fact, which latter he chose, refusing to give his own evidence to his own conviction. He flatly denied all that could not be proved. If I am not mistaken, either he or Lockhart mentions that he stoutly denied the authorship to the prince regent at dinner, when interrogated by him on the subject.

XXVIII. The reason why some conscientious men have in theory denied our right of denial of facts—for it is impossible to carry it through in practice; or would any one betray his child on the weak and abstract obligation of truth towards murderers?—is owing to the danger to which its admission seemed to expose (although by no means a greater one than its denial) and to a want of distinction between the appearance and spirit of truth. As to the first, no one can deny it; we must admit that our decision depends upon our judgment of the right which he who asks has to ask, and the wickedness of his purpose—subjects which any person desirous of dissembling may easily imagine. But though dangerous, and though liable to be perverted by disingenuous persons or by our own interested views, it is no more so than a thousand other truths, which strictly depend upon the honesty of our purpose. We have in no case moral rules which for each practical case are absolute; we have always to judge and weigh. Yet, although dangerous, it is infinitely better boldly to approach the truth and state its precise character, than to give abstract rules which cannot, and every one feels ought not to be applied. So is the desire of wealth dangerous and easily degenerates into covetousness. Yet it is infinitely better to pronounce at once that under proper restraints it is a laudable desire, salutary in a high degree for society, than to teach that wealth is absolutely to be despised, while the whole civilized world and all states act and have always acted upon different principles. I know of no error which unsettles morality more effectually than an apparent theoretical consistency at the expense of other and equally imperative demands of duty, and which, therefore, does not stand the test of reality, where the problem is not to act out one single principle, unconcerned about everything else, but to do truly and essentially our duty in all the many complex cases daily occurring in practical life. I repeat, however, for my young readers, that I have spoken here of cases of exception, that the spirit of veracity, the main conservative of private life and the first of all demands in science and religion, is of equally primary importance for the essential and lasting prosperity of a nation, both in domestic and foreign relations. What has been stated here has been prompted by a desire to diminish hypocrisy, a vice no less frequent nor dangerous in politics, and especially in those of free countries, than in religion; by a desire candidly to state the truth.

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[1] To have any idea of the effrontery and reckless mendacity of Louis XIV. it is necessary to read his correspondence with Count Estrades, his ambassador near the United Provinces, in Lettres et Mémoires, 9 vols., Hague, 1743, or such works as Basnage and all that relates to the great De Witt. Charles II., having concluded the triple alliance with the Low Countries and Sweden, in 1668, chiefly to oppose the conquering spirit of Louis XIV., declared that it was an offence against him and a blot on his reputation to propagate the rumor that he could attach himself to France, and made the most solemn protestations to De Witt, while he and his ministers were already receiving bribes from Louis. Raumer justly observes, in his History of Europe, vol. vi. p. 48, "There may be cases and moments when another has no right to demand the full truth, or when pronouncing it, opposite to criminals, may cause the ruin of the noblest plans; but when the free king of a noble people, contrary to his advantage, honor, and pledged word, deceives with lies his faithful allies under the mask of amiable candor, and in the pay of the unrighteous, it is an infamy so loathsome and condemnable that no wrong of a private person can be compared to it, and no censure appears too hard."

XXIX. We must remember that the essential truth contained in words does not solely depend upon the form of the words, but upon their true spirit.[1] If a jury bring in a verdict of not guilty, they do not mean to say that the criminal is absolutely not guilty of the crime with which he has been charged, but that he is not guilty in the sense which these words have and ought to have in court, according to the circumstances and evidence. Nay, more, Lord Mansfield charged juries to find the prisoner guilty of having stolen an article of value under twenty shillings, though it was manifestly worth much more, because another verdict would have brought the prisoner to death, a punishment of excessive cruelty, considering all the accompanying circumstances. What then did this verdict mean, disagreeing as it did, according to the letter, with the facts? It meant that the prisoner ought not to die according to the eternal justice in man's heart, which precedes and supersedes all enacted justice; according to the truth of the law, which is to punish crime, not commit enormity; which is for the welfare, not for the ruin, of society; according to those principles out of which men will not and ought not to allow themselves to be reasoned by form or technicality. It is the spirit of words, not that which I arbitrarily or fraudulently supply, but which they ought to have in the spirit of truth, which decides their truth, and real meaning, not their form.[1]

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[1] This, it will be observed, means something entirely different from mental reservation, which is intentional lying, and of which I have spoken in the Hermeneutics. But take the following instance: A wishes to draw on B and to sell the draft to C; C, not knowing A, says, "I will send the draft to B, and the moment it is accepted you shall have the money." A agrees, but that the draft be what it ought to be, he must insert the words "Value received." Although he does this in writing, and although he has not received the value, the whole is no lie. It is a case in which the form of words differs from the essence of truth, according to which the former are entirely in order.

The subject is so grave a one that the reader must permit me to dwell for one moment longer upon it. Kant, in the previously cited passage, speaks of the *absolute* demand of truth, which according to him forbids us to deny the presence of a friend in our house to his interrogating murderer. The whole essay seems to me to be inconsistent, from a desire of consistency. Kant restricts his remarks upon truth to speaking, to words only, and, secondly, he does not mention the case in which I believe the unanimous voice of mankind admits the right to pronounce words which disagree with fact; I mean the case of a physician, who for medical reasons may be bound to deceive the patient respecting his own state of health, or some news which would greatly injure the patient;[2] or when children put questions to their parents a positive answer to which would be of great moral injury to the youthful mind. If the parent gives an answer which if correctly understood would convey truth, but understood as it must be by the child does not convey the truth, it amounts evidently to deceiving. Why, however, does the philosopher dwell on deceiving by words only? If I escape in disguise from evil persons, do I not positively desire to make a wrong impression upon their minds, and is this not speaking an untruth to them? When Louis XIV. harassed the Huguenots to death, were they not allowed to escape in disguise, and, had passports then existed, would the most pious member of them have tarnished his purity by travelling under a false passport? But does not a written passport speak? Do I not say, by showing this name noted down, This name is mine? Under what class must we bring the case of writing under an assumed name in order to escape the persecution of enemies? Calvin made use of seven different names in signing his letters, for instance that of Espeville in writing to the duchess Ferrara. He could not have done it otherwise, and undeniably did it to deceive his enemies. Was Quentin Durward wrong in passing the young countess of Croye as the daughter of Pavillon, to save her from the brutal grasp of De la Marck? That the spirit of truth decides, and not its form, appears clearest, perhaps, in the case of poets. They are not charged with falsehood for stating things as having really happened which have never existed. Why are they thus allowed to state in absolute terms what is not true, with perfect impunity? Because no one expects them in that case to speak the truth, at least no well-informed person, and we allow the poet even to deceive those who believe his statements; for instance, children. In this case, then, we do not expect the truth; the case which I have put is still stronger. The querist ought not to expect the truth, because he acts wickedly.

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[1] Lieber's Legal and Political Hermeneutics, where more on this subject is to be found.

[2] [Many physicians deny what the author here lays down. They say that the belief that they will give false answers about the health of patients destroys confidence in them when they tell the truth.]

If I have not found the precise truth, let others state their views, but let us not either pass over the subject in silence, or state rules with an absoluteness with which no one does or can carry them out, and which necessarily produces therefore that evil which invariably follows the acknowledgment of a moral rule in theory and its frequent disregard in practice. Let us draw our lines distinctly, for indistinctness in moral delineations is dangerous.

I cannot conclude this discussion without recurring once more from the exception to the rule, as grateful to the heart of an honorable man as the other is painful. The obligation of veracity is not only great respecting each case in particular, but more so still in a general point of view; for falsehood is poison to individuals and nations; it weakens the soul, self-respect, and consequently energy.[1]

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[1] Lord Russell might perhaps have saved his life, and himself for his loving wife, a woman who had shown herself so faithful, so great, that every man not entirely void of feeling would certainly do all in his power for her, by signing a declaration that he had changed his opinions upon the lawfulness of resistance

XXX. The subject of honesty applied to matters of moneyed value deserves likewise especial attention in political ethics. I propose to offer under this head a few remarks also on liberality, worldly independence, desire of wealth, disregard of riches and poverty, with respect to their effects in ancient and modern times.

Wealth of itself is not necessarily a benefit to the possessor. "No more is liberty, or health, or strength, or learning,"[1] or beauty, skill, courage, shrewdness, or experience. Every one of these blessings or qualities, unconnected with other essentials, has become at times the cause or promoting auxiliary of suffering, vice, or crime; so in turn has poverty or disregard of wealth. In a general view, however, the desire of wealth and especially of a competency, that is, of possessing a fair share in the goods of this world, is not only harmless, but laudable, and its being general is a necessary element of national prosperity. By this I do not mean the acquisition of public treasures and forces at the disposal of government, but a healthful, vigorous, and industrious state of all classes, absence of abject poverty, and of an oppressive concentration of riches in a few. Without a generally diffused and wholesome desire, not a craving, for wealth, there can exist no general desire of independence, one of the very elementary principles of practical and sound civil liberty; from which a manly love of freedom and a faithful devotedness to our country gush forth with a vigor and fulness more free and enduring than from any other source.

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in extreme cases. His friends, two clergymen, urged him to do it, because they themselves perhaps believed that this opinion was wrong (though Burnet, one of them, must have changed his opinion not long after); he was quit with his persecutors, who had sentenced him upon perjured testimony and after unjust trial: yet it related to his inmost conviction, which he could not and would not belie. His soul revolted at the lie as such, and not, as clearly appears, because he was too proud.—Life of William Lord Russell, by Lord John Russell, 3d ed., London, 1820, vol. ii. ch. xvi., and Appendix, p. 265.

[1] I think that Archbishop Whately has treated the morality of the desire of wealth with justice and lucidness in his Introductory Lectures on Political Economy, London, 1831, especially in the 2d Lecture.

Desire of wealth, in the sense in which it is taken here, does not exclude frugality, the contentedness with the worldly means at our disposal, and the conscientious regulation of our expenses according to them. Frugality forms one of the several social elements which are indispensably necessary for the continuance of civil liberty, and without which it is impossible to maintain it, however long its forms, such as that of a representative apparatus, may continue. The most important of these social elements appear to me to be, frugality, with habits of industry; a strong sense of justice, and not of oppression, be it in parties or classes, government or individuals; honesty, reliance, and love of independence.

So soon as the majority of a people cease to be in a state of substantial independence, eagerly maintaining it or honestly striving for it, so soon will appear, *below*, a large abject class of submissive paupers, and *above*, a turbulent or arrogant class of a few powerful proprietors, who indeed may harass government or extort great franchises for themselves, but must always produce a state of things incompatible with a healthy, vigorous, lasting, and not precarious civil liberty, bearing within itself the energy to maintain itself. Without this love of independence there can be no general high standard of comfort, without this no general industry. We have seen already in this volume how universal and inborn the desire of property is, a principle indelibly impressed on the human soul, because indispensably necessary for the support and advancement of society and civilization. Covetousness is not necessarily connected either with general wealth or a universal desire for it; on the contrary, we find covetousness much more universal and in a more hideous form with poor and, especially, uncivilized tribes, than with those nations which have advanced in civilization. If we sacrifice other essential interests to the desire of wealth, then indeed it becomes ruinous or vicious; but in this the desire of wealth does not differ from any other legitimate desire. Few things can be more innocent in themselves than a desire of health, yet individuals have existed who have sacrificed children because it was believed that their blood would restore a sickly body. What indeed is more lawful and necessary for the foundation of the state, and even for the existence of mankind itself, than the attachment subsisting between the two sexes? yet what has led and is daily leading to more vices and crimes than this primary principle in the order which the Maker prescribed to his world?

XXXI. Yet, although we were to take a different view of the beneficial effects of the desire of wealth, in general, and to believe that it ought to be prevented by institutions were we to begin anew—a view of things which it will be remembered is inadmissible if the opinions I have sought to establish in a former part of this volume are granted as sound—for us as we now exist, since the accumulation and diffusion of wealth have taken place, and since nations have started on the path of civilization and do not and cannot remain stationary, no alternative is any longer left. Knowledge, industry, and civilization do exist, and no greater bane can befall society than their existence in a nation in which a large class is nevertheless excluded from them. They then become the very incentives and hot-beds of vice and crime.[1] We want,

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[1] It may not seem gracious to quote one's own words, but if an author has previously written on a subject which in a subsequent discussion he must discuss again, and he has at first expressed his thoughts as well as he is able, I do not see how he can avoid it. I may be permitted therefore to repeat here in a note a few words of a pamphlet of mine which was published some years ago by the Philadelphia Prison Society on the Relation between Education and Crime, especially as, from its nature, it cannot be in the hands of many. As the third reason why diffusion of knowledge is necessary, with reference to a diminution of crime, I said, "There are no individuals more exposed to crime than the ignorant, in a civilized community; or, in other words, those individuals who are touched by the wants and desires of civilization, or by the effects of general refinement, without being actually within the bosom of civilization.

"It is on this latter point that I greatly rest my opinion of the necessity of universal education with the European race. Civilization exists with us; we cannot stop it, even were we desirous of doing so; and the outward effects of civilization without knowledge are the greatest bane that can befall any class or individual. Ignorance without civilization is no peculiar source of crime; ignorance with civilization is an unbounded source of crime, both because it lessens then, among other things, general education, be it general by private means or by public general school systems. But education, by whatever of these means it may be promoted, requires wealth. Books, schools, teachers, colleges and universities, the support of men who may freely and undisturbedly give their whole time to the pursuit or diffusion of knowledge, be this as teachers or as individual votaries of the highest branches (which are far from being mere luxuries, but are like the luminary of the heavens, at the same time shedding light and vivifying the earth beneath), require general wealth directly as well as indirectly, on account of the time during which those that learn or teach cannot be engaged in the actual production of subsistence.

In this as in various other particulars relating to wealth, our situation differs materially from that in which the ancients found themselves. The amount of knowledge which existed in the more primitive stages of mankind was such that a citizen might acquire that share which prevented him from sinking below the general level, with comparative ease; it could be orally transmitted, in a great measure, both because it was limited and the citizens communed with one another in the open air or the market. We have to learn first of all to read, write, and cipher, without which we are entirely debarred from the general course of civilization, but with which we have acquired as yet nothing but the merest instruments. Every branch of knowledge, those necessary for the citizen at large included, has vastly expanded, and requires patient study, which, again, requires time. The ancient states—I speak of the free and best, not indeed of those vast empires in the East, which were in a constant process of transformation—were, as we have seen, city states, in which the citizens could orally commune on their far less difficult questions of

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the means of subsistence and lowers the individual in the general and his own esteem—it severs him from the instructed and educated. Instances are afforded to us in the lowest, most ignorant, and destitute classes in all large cities, or in some frontier tribes, who receive certain views and notions of civilization, and yet live without education and instruction."

politics; *we* are in want of newspapers, reports, and books, to weigh justly our politics, which to the blessing of mankind become daily more the questions of mutual compromise, of poising each other's rights, and hence less absolute or autarchical, but more complicated. The accumulation of wealth, that is, the saving and storing of labor, has increased; this, together with the infinitely greater population of modern states and brisker industry, has greatly elevated the common standard of comfort. A pauper in England receives among other things an allowance of tea; a private soldier is furnished with comforts in food and clothing of which the ancients knew nothing. Ancient civilization was in its character Southern, an out-door civilization, if I am permitted to use the expression; modern civilization is Northern, an in-door civilization, ever since the stream of civilization has run among the Northern tribes. All these circumstances have contributed to elevate the standard of comfort, and to make a degree of wealth, by way of property, or periodical remuneration for skill or knowledge as wages, or salaries, more desirable, indeed necessary. Merely to maintain a respectable position —I do not speak of a positively influential one—a considerable share in the national wealth is necessary. A man must be able to dress himself and his family with propriety, and to keep his home neat, merely not to sink below the common level, or to commune with others, without which he cannot share in the common stock of civilization. A man in antiquity might contrive to live in a tub, and yet be styled a philosopher; in modern times he would be taken up under the vagrant law: it was possible to teach, in ancient times, walking from place to place; a teacher, to have any influence now and to promote seriously and conscientiously the cause of knowledge, not merely to obtain money from the curious, must have at least a respectable station, though he may be poor, and honorably poor, in so far as this applies to the actual possession of property.

XXXII. Desire of wealth, then, not desire of riches, is salutary as a national impulse and is not immoral in the individual; but, before all, a generally diffused desire of independence is an absolute requisite for free and moral action—moral and mental independence within, and independence respecting social relations without. The latter may be attained in two different ways, either by acquiring the worldly means of independence, in property, trade, or salary, or by lopping off our wants, to satisfy which only we desire the former. The latter can be carried to but a limited degree in modern times, for, as was said, though a man were to resign all luxuries and expensive gratifications, he would still be, in modern times, very dependent without any means; he could not inform himself on the most important subjects of the times, and would be excluded in a very great measure from intellectual intercourse. Instances strongly illustrating this position are not wanting in the literary history of the latest times. But though the desire of accumulated wealth is unimpeachable, and many of the noblest of mankind have possessed it together with an elevated spirit of liberality and true independence of mind, it is nevertheless true that very frequently a total absence of it is the accompaniment of nobly-fashioned souls, of patriots and statesmen as well as the votaries of science, the arts, or religion. There is no general obligation to pursue wealth; all that can be demanded upon ethical grounds is the endeavor to make ourselves independent; if we are so and feel so with small means, and if we can serve our species better by pursuing other branches, at the entire expense of the pursuit of wealth, be it so; but it is important to observe that upon every consideration, private or political, it is necessary to keep ourselves free of debt, and not to live upon the bounty or support of others, in whatever form it may be proffered.[1] Being in debt is very apt to hamper free action, to destroy the necessary freedom of judgment and buoyancy of mind, when the "res angusta domi" weighs upon the mind, and the man, as private citizen, magistrate, representative, or leader, feels dependent, straitened, and cramped in his vote or any other political action. Not a few statesmen have been prevented from boldly and honestly taking that course which their genius or inmost and genuine bias of soul and sympathy pointed out to them, solely because they were indebted, first in a pecuniary way, and consequently by way of gratitude or decency, to those who assisted them. It is not necessary that they actually sell their better judgment: the worst effect of continued straitened circumstances is that they affect unconsciously even the nobler minds. Nor is it necessary to mention here how much influence there is always and necessarily attached to the possession of substantial property or to a sufficiency yielded by a profession in the community in which we live. All its members feel that in weal and woe we are entirely one with them. As to the establishment of a family, a competency is still more desirable. Still, there are most noble souls in whom this element is so entirely wanting that they alienate all worldly means so soon as they flow to them. They ought then to force themselves the more in some manner or other to contrive, if not to collect wealth or riches (for, being against their nature, it would only harass them in turn), yet surely to save so much as is necessary to keep them free from obligations to others. Yet so noble is it to be liberal, that the community will always be inclined to look indulgently upon such a man; while the fault on the other side, meanness, infallibly ruins a man in the esteem of his fellow-citizens, and justly so. For, while disregard of wealth, even in an injudicious degree, may and frequently does co-exist with the best qualities of the soul, which indeed not unfrequently are the first cause of it, meanness is the cause and effect of a hundred other low qualities of soul, against all of which even excessive liberality is a proof and evidence. The almost unexampled influence which Pitt certainly did enjoy, and by which he ruled England in a period of the greatest difficulty, was essentially aided and supported by the perfect conviction which all England had of his disinterestedness in money matters, and that while he made peer after peer, while he appointed others to the most lucrative offices, and millions passed through his hand, he was known to be neither extravagant nor ever even easy in circumstances, a situation which could only remain unembarrassing to so gifted a mind. Whatever may be the judgment which we feel called upon to pass in calm reflection, still we feel constrained to respect his disinterestedness, when we read that this premier of the wealthiest nation on the earth was giving a political dinner to the ambassadors and high functionaries up-stairs, while below-stairs an officer was waiting to lay hands on him for debt; especially if we remember that Pitt was in possession of a profession to which he would have recurred if turned out of office, and that he might have been wealthy had he not sacrificed all private considerations.[1] We must also remember that the people knew that the embarrassments of Pitt were not caused by prodigality, or dissoluteness in gaming or otherwise. When the king of France offered two rich abbeys to Richelieu, which had belonged to one of his enemies, he said, though I own he was then rich, and in his position at that time could not well avoid becoming so, "My ambition aims higher, at a place in universal history." There is hardly a history of the first French revolution in which mention is not made that after the arrest of Robespierre a few pieces of money only were found in his bureau, nor was he possessed of other property. Even his crimes, great as they are, we feel might have been increased had he added avarice to them, as some of his companions in guilt actually did. How edifying are those accounts of the ancients, Epaminondas, Philopœmen, Fabricius, and many others, upon whom the offer of wealth or their own poverty had no sort of influence! How cheering is the life of Pym also in this respect! He died without any property, having sacrificed all his time and energy to his country, and parliament had to pay the small amount of debt which he left. Compare these examples of freedom from sordidness with those favorites, of whom history mentions so many, who used the ascendency they acquired over weak-minded monarchs, to accumulate riches, however illegally, unrighteously, or cruelly gotten, and to make every one of their kindred participate in their plunder.

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[1] This does not include a fair contribution on the part of the fellow-citizens after a public man has sacrificed, in times of danger, his private means for the public good.

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[1] Wraxall gives several remarkable anecdotes of this trait in Pitt, in his Posthumous Memoirs of His Own Times.

The rule, then, for a public man, or one who feels a calling to become such, in a free country in modern times, seems to me this:

Keep yourself independent, which includes first, as a matter of course, a total discarding of that silly and little-minded desire to rival your rich neighbor in his way of living, and secondly, that you should be possessed of the means of maintaining yourself, be this by the possession of a moderate property or a profession or trade (Spinoza was a glass-grinder); and, that these means may be easily acquired (for otherwise you would not feel independent), reduce your wants to the lowest degree compatible with a continued communion with your fellow-beings, by way of intercourse with your neighbors, and by way of books with the distant and dead, on the one hand, and a decorous but modest maintenance of your family and the sound education of your children, on the other.

XXXIII. The desire of wealth being natural, and especially so in modern times, we must most scrupulously guard ourselves against its excess, in its various forms and manifestations, meanness, covetousness, dishonesty, and whatever other evils or vices arise from it. In every light in which we may view the subject, it urgently demands our undivided attention.

All nations have abhorred peculation, by which we may understand, in its widest sense, the abuse as well as the purloining of public property, and which may consist in using, for a limited period, public funds or property for private ends, in purloining and robbing them, and in the abuse of official information for private gain. I am not aware that the latter has ever been comprehended within the term peculation, though it is punishable according to several codes. But, philosophically speaking, it is certainly a species of peculation; for it belongs to the same class of dishonest actions, springing from the same immoral source, with the crime of peculation properly so called.[1]

Excessive ambition, excessive attachment to kinsmen or friends, nepotism, excessive party attachment, excessive shame to confess wrong, excessive love of action, all have become at times injurious to the state, and may most seriously disturb its essential prosperity; but none of all these passions can be compared in their baneful effects to public dishonesty. All the former may still co-exist with some redeeming qualities; we may think even of conspirators against their country, impelled by criminal ambition, not without feeling horror indeed, yet without actual loathing, but we cannot so regard a band of peculators. Peculation presupposes meanness and total degradation, which do not absolutely belong to the ambitious conspirator. A man who commits knowingly wrong for money, who *sells* himself, has been considered the most abject of evil-doers, and may be supposed ready to commit all the evil acts of the others besides his own crime. So soon as covetousness becomes general in a civilized nation, so soon as dishonesty is a general crime, so soon as public places are considered by common consent as fair opportunities to enrich their holders, willing to wink at each other's embezzlements, so soon as parties consider themselves by their success entitled to the spoils of the public—so soon there is a deadly cancer in the vitals of that society, and hardly anything but severe changes and revolutions can save it. Justice will be sold, bribes become common, public opinion become vicious, veracity will be disregarded, patriotism be derided, every memory of greatness or nobleness be disgraced, oppression in every degree become general, and the moral tone of society at large, which must always remain the first spring from which public prosperity flows, will vanish. The history of the period of Charles II. furnishes a melancholy example; bribed judges, lists of members of parliament paid by the French ambassador, and, to crown all, a king in the traitorous pay of the greatest enemy of his own country.[1] The history of France before and during the first revolution,[2] the history of Italy, the history of Spain, of Portugal, all prove the same. Peculator after peculator was sent from the mother-country to the colonies of the peninsula, and the consequence even now is the low moral tone and endless misery in the republics of South America. No history, however, is perhaps so impressive on this subject as that of Rome from the second Punic war, and especially under the emperors, and of Athens.[3] Individuals are exposed to follies or criminal imprudence if they do not take heed of past misfortunes brought on by faults of their own; nations do the same if they neglect their own history, or that of other states, which exhibit a warning with awful solemnity such as is contained in Roman history.[4]

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[1] It is certainly one of the worst because most unprincipled kinds of peculation, if government favor private persons with information, or early knowledge of messages, etc., because they belong to the same party. The most criminal abuse of power, however, in this province is if a minister or other officer spreads false news to raise or depress certain funds for private speculation.

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[1] Among other works, the Diary of Samuel Pepys, London, 1825, deserves to be read on this account.

[2] Montesquieu dwells upon the universal dishonesty and covetousness as one of the greatest evils of France. The memoirs of all the different reigns show this vice in a frightful degree. Nothing strikes the reader of the memoirs ascribed to Sully so much, besides the glorious relation between two great men like Henry and Sully, as the rank poison of universal rapacity through the whole leading class of the nation, from the prince of the blood to the counsellor of parliament or farmer of the taxes.

[3] "The desire of gain destroyed all sense of equity." Boeckh, Public Economy of Athens, London, 1838, vol. ii. p. 129. Athens suffered fearfully in consequence of the lavish distribution of public money by the popular leaders, partly obtained by excessive fines and confiscations by bribes and by exactions from foreigners. As above, vol. ii. p. 114, and many other places.

[4] Sismondi, History of the Fall of the Roman Empire,—part of Lardner's Cabinet Cyclopædia; but, before all, Gibbon's History of the Decline and Fall of the Roman Empire. It is a melancholy fact indeed that Gibbon is little

XXXIV. A general argument by which public defaulters endeavor to appease their conscience or to present themselves in a less guilty light before others, if detected, is that no one feels their robbery, the amount being but a trifling sum for the state; thus making the immorality of the act rest altogether on its momentary effect. Society, however, does feel it, for common dishonesty is a moral dissolvent. Yet even were it not so, could the dishonest act never be discovered, is the defiling of his own mind, his own soul, the admission of shamelessness and dishonor, nothing? Is he not injured by it? does he not rob much more from himself than from the public? Is he not a criminal in his own conscience, and a greater criminal the higher the trust that was placed in him, and the less he was pressed by actual want or corrupted by contaminating society? The crime of defaulters generally is far worse and more pernicious to society than theft.

The danger of peculation is the greater, the freer a state is, not only because the greater liberty requires the greater morality for its support, but because the more despotic a monarchic state is, the more is government concentrated in one visible person. Peculation, consequently, is considered and punished as actual robbery of the monarch's personal

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read now; general observation would lead one to the conclusion; it is a fact likewise confirmed by the booksellers. They sell but few copies in the United States, compared to what they did but fifteen years ago; how it is in England I do not know. This is much to be regretted. So mighty an empire ought not to have crumbled into dust, with so many crimes and such unspeakable suffering for centuries, without our heeding it. In the decline of Rome we see a large and most remarkable state in a state of maceration. The physiologist derives some of his most important knowledge of the sound body from the diseased; the deranged functions and pathologic anatomy aid him in arriving at a true knowledge of the healthy state; the philosopher of the mind derives valuable instruction from observing the insane; the anatomist learns the organization of the living body from the dead: so also is it in politics. The disturbed functions of bodies politic teach us how sound ones operate. Nations passed by are our subjects; they lie still under the scalpel, and we may inquire with a mind unaffected by influences of the present times.

Or is Gibbon so little read on account of his skepticism? I hope not: it would betray very little confidence in the power of truth.

property; it acquires much more the character of common roguery and theft. The freer a state is, however, the less personal and the more national becomes the government; the personal image vanishes. Royal property in England appears justly much more as national, as public property than in Russia; and in America public funds are the property of an entirely invisible thing, of the United States. Persons therefore who have paid little attention to moral principles, in whom strict morality has not on account of itself been instilled in early youth, feel less reluctance to rob this invisible institution called state, or invisible body called public, than they would feel perhaps in robbing an individual monarch. Besides, the freer a nation, the more impediments there are in the way of arbitrary justice, on which the defaulter calculates, while in despotic governments the arm of power reaches such a criminal without the intervening obstacles carefully raised to protect possible innocence.

In ancient times there was greater opportunity of peculation, on account of the less thorough organization of the administrative part of government, and the comparatively feeble control at least of distant officers, owing in part to the more general want of skill in writing and of cheap and common writing-materials. But, on the other hand, there is greater temptation to peculation in modern times, because wealth is more generally desirable; money has a greater value, considering what we may obtain for it; and the easy intercommunication between distant countries, as well as the more extended credit, owing to greater security, gives to money altogether a much more intense action. The meaning of money has considerably changed; speculating at present is an action which may attract an active mind of itself. All these circumstances are so many inducements to an individual of lax principles to seize upon what does not belong to him, not unfrequently with the hope of replacing the money; especially in periods when at times whole nations are bewildered with a frantic covetousness and feverish desire of becoming rich and rapidly so, not by labor, exertion, careful combination, and patience, but by speculation, however fictitious, mad, or even fraudulent, or playing at chance. It was such a period when the whole British public seemed to be seized with an anxiety to embark in any even the most egregiously foolish enterprises, at the time of the so-called South-Sea scheme;[1] such, too, has been the feverish period which we ourselves have lately passed through in the United States—a period the evil effects of which will be observed by the careful and attentive long after the superficial shall see all former prosperity restored.

If, therefore, frauds in public funds have taken place—for they cannot be entirely avoided, since it is impossible to know thoroughly every one who is to be trusted in public service—the whole society is deeply interested in eradicating the evil as far as possible. In the best society the most enormous crime may be committed. It is the act of the individual. But if the society, from laxity of principle and public moral feeling, allows the crime to pass unpunished, it becomes the crime of all. So with public criminal defaulters. If society omits to punish them, if the people, finding their officers lax or unwilling to punish these crimes, do not rise in indignation and call with one voice for the trial of the offenders, they make the act their own. It is pusillanimous and most injurious to punish the actual defrauder or peculator only, and not the higher and highest officers who by guilty indulgence or neglect of rigid control have contributed their share in inflicting this wound upon the vitals of the state. In this case, as in others, we must not forget that the more extensively we may produce a good effect by one legitimate punishment, the more it is our duty to punish, and that punishing one high person has a more impressive effect in public morals than punishing many lower officers. Impeachments of ministers are, if just and true, sound and highly beneficial exercises of the power which the constitutions of free countries trust to the hands of the representatives. They consolidate liberty and stamp the history of a country with that warning seriousness without which one of its best elements is missing.

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[1] Anderson's History of Commerce. He gives a list of the schemes, some of which appear, now, so ludicrous, if we can forget the general calamity of the country at the time, that we should almost discredit him, had we not seen very similar things in our times, when "lots" in cities were sold at high prices, although of the cities nothing but the name and perhaps the incorporating act existed, while the aboriginal trees were yet standing in their majesty upon the intended spot, and wasted their example of lofty yet slow and patient growth upon the maddened multitude at the distance, who thought that villages and towns might spring up with the same rapidity with which the painted villages are said to have been erected at a distance from the road on which the empress Catherine of Russia travelled through the Crimea.

XXXV. If a spirit of dishonesty in the officers is immoral and detrimental to the prosperity of the commonwealth, it is but little less so if there is a similar spirit of robbing the public in the citizens at large. The truer a government in its character, that is, the more directly or materially it tends to the common benefit, the greater is the wrong against our fellow-citizens committed by fraudulent avoidance of the paying of taxes, or any other dishonest act against the public. At the same time, it is perfectly clear that the more tyrannical or iniquitous a government is, the more it maintains itself by force, and the more grinding its own oppressive and robbing character is, the more a citizen becomes absolved from that conscientious frankness and spontaneous co-operation in supporting the government, which form the pride and vital energy of good, free, and wisely-conducted governments. An upright man cannot be expected not only to pay cheerfully his taxes, but to pay them with a voluntary co-operation on his part, if he sees the money wrung from the sweating laborer not only uselessly squandered but actually spent for iniquitous purposes, such as the maintenance of mistresses and favorites branded with infamy, or the oppression or persecution of the innocent. I do not discuss here the subject of refusing taxes. This belongs to the province of obedience to the laws and resistance ; here we have to weigh only how the citizen ought to act when he thinks there is not yet sufficient reason for resistance, or when it would be too dangerous an experiment, or on whatever other ground he does not resist. It would appear just and reasonable, as a general principle, that the more a government deviates from its true aim, namely, the common good, the more prodigal or iniquitous it becomes, the less is a citizen bound to co-operate on his part spontaneously to contribute his share; the more right has he to leave the whole to those who have the power, and to let them make out, demand, and obtain their taxes as they can. He is perfectly justified in paying as little as possible, even though the share assigned to him be too little according to the principle laid down by government. They establish it, they have the power, let them obtain it. This, it will be perceived, is but a negative action; I do not speak of fraud, false statements, etc.

Different from the above is smuggling. Of course smuggling by way of false entries, perjury, or bribing custom-officers is too clear a case of ruinous immorality to deserve any farther attention respecting the ethic principle involved in it. As to its baneful consequences and the general state of moral degeneracy which it requires before it can become general, we need only to examine the state of things in such countries as China or Mexico, to be fully and deeply impressed with the evil. A man does not easily perjure himself or allow himself to be bribed at once or in one particular sphere. The spirit of action does not depend upon its outward form, but springs from the inner original source of moral feeling. If it becomes turbid, the impurity will flow into other actions likewise. But the question is, and actually has been put and discussed, whether a man has not a right to smuggle, or otherwise to evade, not by mere omission on his own part, but by positive action, the customs levied by government; provided he be perfectly willing to submit to the penalty affixed to this action by those in power in case of detection. Those who have maintained that he might, have started from the wrong view of a total separation of the government from the society over which it rules. We have seen, however, that the state is natural, essential, and necessary, and that government is but the means and contrivance to obtain the ends of the state, and obedience to the laws is of itself a general duty.

The smuggler, moreover, robs the conscientious part of the community, because as far as the goods smuggled by him are concerned he saves the tax which the scrupulous have to pay for their goods; he declares himself in opposition not to a set of men but to the laws of his country, hence more or less to the society at large in which he lives; he must accustom himself and his whole family to fraud and violence,—for it is but futile to suppose that a man becomes a smuggler without being resolved at the same time to resist violently in case of detection while in the act of smuggling,—and he prevents that easy, even, and healthful operation of the laws which is one of the fairest attributes of a well-governed country. Experience in every country proves our position. Smugglers by trade have never yet been found otherwise than a highly dangerous, because lawless and violent, class.

It may be well to remember here what was said at the beginning of the work, that in a moral point of view we never can act through another; we either act or suffer: a mean is not possible. There is additional baseness in the action if we abet and aid in offences but have not the courage to commit the act itself, as for instance there must be always sly receivers who sell, where there are sturdy smugglers who import. I know of some former cases of piracy in the West Indies—and wherever this crime is committed they are not rare—when merchants, apparently fair in their dealings, received goods obtained by piracy and had previously lent capital to the pirates to lay it out in their criminal business, excusing themselves on the ground that they had never been told for what the money was wanted or whence the goods came, and that they were not bound to inquire. But were they not? They were not legally bound to inquire, but they were morally bound not to reject from their minds the evidence which was forced upon it. The mere words and outward acts do not constitute that upon which the morality of man's intercourse with his fellow-men depends.

Perhaps it might yet be asked, How ought we to act under a tyrannical government? Suppose, what has happened repeatedly, an unjust government imposes so heavy a tax upon the necessities of life, for instance upon salt and flour, that the poor man cannot maintain his family; or suppose a country is conquered, a new government imposed upon it, and exorbitant impost taxes levied, as was the case during the continental system under Napoleon—a period which might be called the classical age of smuggling, on account of its extent, refined ingenuity, and daring. In this case the question becomes, as was already said, wholly a question of obedience to the laws, of which the more important must be obeyed before the less important. Nor do unlawful demands, be they unlawful in themselves and demanded by lawful authority, or demands by unlawful authority, carry with them the obligation of laws. Since it is a duty to avoid giving opportunity for disobedience to law, or to challenge it by enacting laws which will, according to the nature of men, infallibly lead to crime, governments are morally bound to avoid legislation which cannot, as society is constituted, but lead to smuggling —a general school of lawlessness. These are among the reasons why excises and import taxes are so much to be dreaded.

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